

# OFF-HIRE KLAUSULER I TIDSCERTEPARTIER

- Tolkningsforskjeller mellom norsk og engelsk rett -



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## **FORORD**

Denne masteroppgaven er skrevet som en 30 vekttallsoppgave i forbindelse med undertegnede mastergradsstudie i Rettsvitenskap ved Universitetet i Oslo våren 2009.

Bakgrunnen for at jeg valgte en oppgave innen sjørett, var at jeg tar spesialisering innen dette fagområdet. I tillegg har jeg praktisk arbeidserfaring fra shipping, og har en generell interesse for bransjen som sådan.

Shippingkontrakter, enten det gjelder avtaler om kjøp og salg av skip eller befraktning, er omgitt av både spenning og mystikk. Dette har bl.a. sammenheng med bransjens internasjonale karakter og at det er store verdier som står på spill. Knappt noen bransje er sterkere utsatt for svingninger enn shipping. Sjokkpregede begivenheter i verdensøkonomien har resultert i at formuer har gått tapt over natten, mens nye er skapt. Her kan for eksempel nevnes stengningen av Suezkanalen fra 1967-1975 etter Seksdagerskrigen. Videre kan også kraftige endringer i valutakursen mellom amerikanske dollar (USD) og andre kontinentale valutaer føre til at skipsverdiene uttrykt i USD endrer seg dramatisk. Dette skjedde for eksempel i perioden 1985-1988, hvor kursen på USD i forhold til JPY (japanske yen) svekket seg med nærmere 120%. Dette medførte et kraftig hopp i nybyggingsprisene (som ofte er nominert i JPY) og dermed også secondhand prisene uttrykt i USD. Slike begivenheter vil også påvirke markedet for beskjeftigelsen av skipene; befraktningsmarkedet. Det vil da få avgjørende betydning for eieren av et skip at han har inngått en ”god” avtale, hvor han på en balansert måte har tatt høyde for de risiki som kjennetegner markedet.

Med dette som utgangspunkt ønsket jeg å se nærmere på klausuler om off-hire (skipet er ute av virksom drift) i tidsbefraktningsavtaler og hvordan disse tolkes i lys av norsk bakgrunnsrett og engelsk rett. Hvilke tolkningsprinsipper kan avledes? Formålet med oppgaven er å undersøke hvorvidt det er grunnlag for å hevde at engelsk rettstenkning og rettstradisjon har ført til at den ”vanlige” norske bakgrunnsretten er blitt fortrent på dette området.

Under arbeidet med oppgaven har jeg hatt uvurderlig veiledning og støtte fra dr.jur. Trond Solvang i Nordisk Skibsrederforening. En stor takk derfor til ham.

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# 1 INNLEDNING

## 1.1 Kort om emnet for oppgaven

Avtalerett i relasjon handel har utviklet seg gradvis, og vi kan finne spor helt tilbake til romerretten. For eksempel førte den pretorstyrte<sup>1</sup> formularprosessen til utviklingen av fullmaktsinstituttet. Dette gjorde det bl.a. mulig for en kaptein, for eksempel ved reparasjon av fartøyet, å kunne inngå avtale med en skipshandler, slik at avtalen forpliktet skipets eier. Tidscertepartier<sup>2</sup>, som er en særskilt kontraktsform innen skipsfarten, har vært kjent lenge<sup>3</sup>, men har særlig vært brukt de siste hundre år. Gjennom bruk har kontraktsformen gjennomgått kontinuerlige endringer, klausuler er tatt bort mens nye er kommet til. Denne gradvise utvikling har både fordeler og ulemper med seg. Fordelen er at kontraktsformen blir kjent og får sin utbredelse. De som arbeider med dokumentet blir fortrolig med det. Uklarheter i certepartiet finner sin løsning gjennom fortolkning over tid, dels gjennom utvikling av festnet forståelse innen næringen og dels gjennom avgjørelser ved voldgift eller domstoler. Ulempen ved denne langsomme og gradvise utvikling er at certepartiene etter hvert blir meget ordrike og omfattende med mange og kompliserte klausuler. I tillegg kommer at praktisk talt alle certepartier er utarbeidet på engelsk. I ulike lands kulturer kan dette lett skape forskjeller ved tolkningen av certepartiene.

Hovedtema for denne masteroppgaven er tidscertepartiene og fortolkningen av ulike standardklausuler knyttet til off-hire<sup>2</sup>. Ved tolkningen av klausulene tar jeg utgangspunkt i Sjøloven og norsk/nordisk bakgrunnsrett og kontraktsrettstradisjon. Tolkningen

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<sup>1</sup> Pretor var en embetsmann i romerriket som hadde ansvaret for rettspleien.

<sup>2</sup> Se nærmere omtale av begrepet i avsnitt 3.

<sup>3</sup> Jantzen (1919) s. 13 peker på at tidsbefraktning ble særlig brukt for dampskip.

sammenlignes så med det resultatet som følger av engelsk tilnærming. Jeg er ikke ute etter å finne en endelig forklaringsmodell som i detalj definerer de retningslinjer som domstolene anvender ved fortolkning av kontrakter. Derimot ønsker jeg å peke på forskjeller og likheter mellom norsk og engelsk kontraktstolkning, og hvordan dette gir seg utslag i bestemte fremgangsmåter ved fortolkningen.

Et annet siktemål med undersøkelsen er å se på hvilke *tolkningsprinsipper* som kan avledes av tolkningsresultatene. Med tolkningsprinsipper i denne sammenheng forstår jeg normer eller retningslinjer for tolkningen. Basert på undersøkelsen og de resultatene som avdekkes, vil jeg avslutningsvis si noe om hvorvidt engelsk påvirkning/tilnærming kan ha ført til at den ”ordinære” norske bakgrunnsretten er satt til side eller fortrenget.

## **1.2 Kort om opplegg for undersøkelsen**

Undersøkelsen tar utgangspunkt i en naturlig og objektiv forståelse av ordlyden i off-hire klausulene. Deretter ser jeg på hvilke fortolkninger av off-hire klausulene sjølovens system gir. Ved denne tilnærmingen er det den norske metoden som anvendes. Med norske metode forstår jeg da kontraktstolkning hvor det tas utgangspunkt i kontraktens ordlyd. Dersom ordlydstolkningen ikke fører frem mht å fastslå hva partene har blitt enige om, utfylles kontrakten med norsk bakgrunnsrett. I undersøkelsen her vil bakgrunnsretten først og fremst bestå av sjøl. § 392 og dens forarbeider samt relevant rettspraksis.

Parallelt med fortolkning basert på sjøloven og norsk bakgrunnsrett, vil jeg belyse fortolkning etter engelsk rett. Her vil engelsk rett og rettspraksis være relevant.<sup>4</sup> Hensikten er å få frem eventuelle forskjeller og likheter mellom norsk og engelsk tilnærming.

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<sup>4</sup> Engelsk rett betegnes som såkalt ”common law” regime. Dette innebærer at i slike rettsordningene skapes rettsreglene oftest gjennom domstolspraksis.

### 1.3 Noen begrepsavklaringer

Når det gjelder begrepene ”tidscertepartier” og ”off-hire” henviser jeg til separat behandling av disse i avsnitt 3 nedenfor.

#### 1.3.1 Bakgrunnsrett

Med begrepet ”bakgrunnsrett” forstår jeg i første rekke Sjøloven av 24. juni 1994 nr 39. Siden det her er tale om off-hire, er det særlig off-hire bestemmelsen i § 392 og sjølovens forarbeider<sup>5</sup>, som kommer til anvendelse. Videre omfatter begrepet også rettspraksis, andre deklarasjoniske lover og generelle kontraktsrettslige prinsipper.

Sjøloven har vært gjenstand for felles nordisk lovgivningssamarbeid som har pågått siden ca 1900-tallet<sup>6</sup>, og som resulterte i at vi fikk vår nåværende sjølov av 1994. Derfor vil også nordisk bakgrunnsrett være en relevant rettskildedefaktor. Selv om for eksempel en svensk dom prinsipielt kan ha relevans ved tolkningen av den norske sjøloven, har den selvsagt ikke like stor vekt som avgjørelser fra Norges Høyesterett.

En sontring som her er relevant å nevne er begrepet klausul-jus, som i juridisk teori omtales av bl.a. Per Gram.<sup>7</sup> I følge Gram blir denne klausul-jusen en form for handelssedvane, og anvendes som en slags deklarasjonisk bakgrunnsrett på linje med lovgivning. Men slik klausul-jus er av en annen art enn tradisjonell bakgrunnsrett. Gram, slik jeg forstår ham, tenker på klausul-jus som beslektet med deklarasjonisk lovgivning, og tjener som et supplement til bakgrunnsretten. I oppgaven her vil min definisjon av begrepet bakgrunnsrett ikke omfatte slik klausul-jus.

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<sup>5</sup> NOU 1993:36

<sup>6</sup> Brækhus (1998) side 269-288.

<sup>7</sup> Gram (1977) s. 15 flg.



### **1.3.2 Tolkningsmomenter og tolkningsregler**

Når det i undersøkelsen her benyttes disse begrepene, legger jeg Woxholths definisjon til grunn.<sup>8</sup> Tolkningsmomenter eller tolkningsdata er enkeltstående argumentbærere av relevans for tolkningen. Dette kan for eksempel være forhold som har fremkommet under forhandlingene mellom partene osv. Når det gjelder tolkningsregler, er dette veiledende normer, som er utviklet gjennom rettspraksis, og som kommer inn der hvor de relevante tolkningsmomentene ikke fører frem. Den såkalte uklarhetsregelen og minimumsregelen er eksempler på slike regler.

### **1.3.3 Ansvar**

”Ansvar” i kontraktsmessig sammenheng kan ha flere betydninger. Begrepet kan benyttes i betydningen ”sørge for noe”, dvs. utføre bestemte oppgaver, eller det kan gi anvisning på bestemte rettsvirkninger.<sup>9</sup> Med begrepet ”ansvar” i oppgaven her forstår jeg den betydning som bl.a. Krüger omtaler på side 140; nemlig et uttrykk for økonomisk erstatningsansvar gjennom plassering av den økonomiske tapsrisiko. I relasjon til off-hire innebærer begrepet ikke vurdering av skyld; men fordeling av risiko.<sup>10</sup>

## **1.4 Avgrensninger**

Når det gjelder begrepet off-hire vil jeg konsentrere drøftelsen om begivenheter som gjelder midlertidige hindringer i skipets bruksutnyttelse. Det vil si at jeg i min definisjon av begrepet vil avgrense mot kontraktens bortfall; enten som følge av mislighold eller bristende forutsetninger.

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<sup>8</sup> Woxholth (2006) s. 400

<sup>9</sup> Krüger (1989) s. 140

<sup>10</sup> Se nærmere omtale av off-hire i kapittel 3.3

Tilsvarende vil jeg avgrense mot den engelske doktrinen om "frustration", som kan sammenlignes med vår forutsetningslære, og slår inn dersom det inntreffer en hendelse som totalt forrykker avtalens grunnlag, jfr. prinsippet i sjøl. § 393. Frustrasjon er utelukkende forbeholdt kontraktens bortfall/heving. Man kunne her tenke seg situasjoner hvor det oppstod en midlertidig frustrasjon av kontrakten, men dette vil ofte være særtilfeller og lite praktisk. I dommen *Tamplin v. Anglo-Mexican Co.* [1916] 2 A.C. 397 var dette tema fremme. Saken gjaldt rekvisisjon under den første verdenskrig av et skip som gikk på et 60 måneders TC. House of Lords kom til at kontrakten ikke var "frustrated", da rekvisisjonen bare gjaldt en del av TC-perioden. Kort oppsummert kan det sies at min definisjon av off-hire begrenses oppad til situasjoner hvor tidsavbruddet har en slik langvarighet at kontrakten blir frustrert, og derigjennom hevingsrett/bortfall av kontrakten.

## **1.5 Videre fremstilling**

Innledningsvis følger noen mellomstadier før oppgavens hovedtema behandles i avsnitt 6 flg. Hensikten med denne inndelingen er for det første å skape en ramme for selve undersøkelsen. Dernest er det også viktig å skape en naturlig progresjon av oppgavens tema. For å kunne belyse og analysere fortolkningen og foreta en sammenligning, er det sentralt ha klart for seg hovedprinsippene i nordisk og engelsk kontraktstolkningstradisjon. Et forsøk på kort å systematisere disse prinsippene er gitt i avsnitt 2 nedenfor.

I avsnitt 3 nedenfor følger en nærmere omtale av tidsbefraktning, partene i certepartiforholdet og deres kontraktsmessige forpliktelser. I samme kapittel gis også en oversikt over off-hire begrepet.

I avsnitt 4 følger en nærmere redegjørelse av de klausulene som jeg har valgt å se nærmere på. Her har jeg valgt å ta utgangspunkt i et utvalg off-hire klausuler blant de mest vanlige tidscertepartiene i markedet i dag. Bakgrunnen for utvalget har også en praktisk rettskildemessig side. De valgte klausulene har blitt gjenstand for tvisteløsning ved norske

domstoler samtidig som jeg har funnet relevante og sammenlignbare tvister basert på engelsk rett. Dette bidrar til god sammenlignbarhet i undersøkelsen.

I avsnitt 5 behandles bakgrunnsretten (den rettskildemessige referanseramme) som off-hire klausulene vil bli vurdert mot. Siktemålet her er å gi en oversikt over bakgrunnsretten som danner grunnlag for tolkningskomparasjonen i avsnitt 6. Avsnittet gir en analyse av gjeldende rett og en komparasjon av Sjølovens løsning versus løsning etter engelsk rett.

Avsnitt 7 gir en kort rettspolitisk vurdering av ulike hensyn som kan gjøre seg gjeldende i tolkningsprosessen, og hvorvidt disse kan ha betydning for bestemte tolkningsresultater.

Avsnittene 8 og 9 behandler og analyserer resultatene fremkommet i avsnitt 6. I avsnitt 8 vil jeg se om det er grunnlag for å utlede bestemte tolkningsprinsipper<sup>11</sup> som rettsanvenderne har anvendt i tolkningsprosessen. Avslutningsvis følger en oppsummering i avsnitt 9. Dette avsnittet utgjør undersøkelsens konklusjon, hvor jeg ser på den norske rettsstilstanden, og hvorvidt undersøkelsen gir grunnlag for å hevde at en engelsk tilnærming har ført til en fortrensel av Sjøloven og norsk bakgrunnsrett.

## **2 NORSK VERSUS ENGELSK TOLKNINGSLÆRE**

### **2.1 Norsk rett**

Et sentralt tema for å kunne belyse og forstå forskjeller i norsk og engelsk tolkningstradisjon, er ulikheter i tolkningslæren. Norsk og nordisk tolkningstradisjon er basert en helhetlig vurdering, som både baserer seg på en fortolkning av selve avtalen som

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<sup>11</sup> Jfr. min definisjon i kapittel 1.1.

sådan, men også en bredere fortolkning basert på mer generelle regler<sup>12</sup> og prinsipper.<sup>13</sup> Sistnevnte forhold betegnes av Woxholth som utfylling.<sup>14</sup>

Norsk og nordisk avtaletolkningslære er bygget opp rundt tre elementer: Tolkningsteorier, tolkningsdata og tolkningsregler.<sup>15</sup> Tolkningsteoriene er teorier om tolkningsprosessens formål; hvilket innebærer en teleologisk innretning. Med teleologisk innretning forstår jeg at man tar utgangspunkt i hva partene har hatt til hensikt eller formål med avtalen, og at dette er styrende for tolkningsprosessen. Tolkningsdata er enkeltstående argumenter av relevans ved tolkningen. Dette er for eksempel ordlyd, partsspesifikke utsagn, partenes atferd før og etter kontrakten kom i stand, partsforutsetninger og lignende.<sup>16</sup> Disse kan kaste lys over avtalen. Tolkningsregler er veiledende normer som fritt kan anvendes av rettsanvenderen/domstolene.<sup>17</sup> Disse er subsidiære regler som kommer til anvendelse dersom man ut i fra tolkningsteorier og tolkningsmomentene<sup>18</sup> ikke kommer frem til noe bestemt tolkningsresultat. Når det gjelder tolkningsteoriene, er det den objektive tolkningsteori som har fått sterkest gjennomslagskraft i norsk rettspraksis og blant avtalerettsteoretikere<sup>19</sup>. Som påpekt av Møllmann<sup>20</sup> er skillet mellom subjektive og

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<sup>12</sup> Med regler forstås her uskrevne tolkningsregler som for eksempel uklarhetsregelen, minimumsregelen og at "det skrevne går foran det trykte".

<sup>13</sup> Woxholth (2006) s. 401 skiller mellom det subjektive og det objektive tolkningsprinsipp. Ved det subjektive tolkningsprinsipp er formålet med tolkningen å finne frem til hva den erklærende har ment med ordene. Ved det objektive tolkningsprinsipp er målet å fastsette kontraktens innhold på bakgrunn av det som er sagt eller skrevet, basert på en naturlig språklig forståelse av ordene. Det er det objektive tolkningsprinsipp som er utgangspunktet i norsk kontraktstolkningstradisjon, jfr. Woxholth s. 402.

<sup>14</sup> *ibid.* s. 398.

<sup>15</sup> Høgberg (2006) s. 15.

<sup>16</sup> Woxholth (2006) s. 397 flg.

<sup>17</sup> *ibid.* s. 400.

<sup>18</sup> Jfr. kapittel 1.3.2.

<sup>19</sup> *ibid.* s. 402. Se også Selvig på s. 250 i Knophs oversikt over Norges rett, 12. utg. 2004: "...men en objektiv tolkningsteori må derfor gjelde i kontraktsretten." Jfr. også Rt 1980 s. 84. Slike tolkningsprinsipper er noe annet enn den definisjon som jeg tillegger begrepet i undersøkelsen her, jfr. kapittel 1.2.

objektive tolkningsmetoder ofte uskarpt. Dog kan det hevdes at tolkningslæren gjennom de siste ca tyve år har gått i retning av mer objektive teorier.<sup>21</sup> Dette innebærer at mer partsspesifikke, subjektive forhold har minsket i betydning til fordel for standardiserte, hypotetiske parters oppfattelse og eksterne hensyn.

Når det gjelder tolkningsreglene er disse uskrevne og utviklet gjennom rettspraksis.. Tre regler vil her kort omtales; nemlig minimumsregelen, uklarhetsregelen og regelen om at det skrevne går foran det trykte.<sup>22</sup> Disse reglene finner vi også anvendt i engelsk tolkningslære<sup>23</sup>.

Minimumsregelen går ut på at ved tolkningstil så velges det alternativ som er minst inngripende for løftegiveren. Uklarhetsregelen innebærer at man i tvilstilfelle velger å tolke kontrakten til ugunst for den som har forfattet det omstridte vilkåret, eller som ønsket å gjøre det til en del av kontrakten. I regelen ligger et element av skyld, i det den som burde ha uttykt seg klarere sanksjoneres for å ha brutt denne normen. ”Straffen” er at kontrakten tolkes til hans ugunst. Regelen kalles også for konsipistregelen, og er myntet mot dem som har utferdiget (konsipert) kontrakten eller vilkåret. Den vil ha særlig betydning i kontraktsforhold hvor det foreligger ensidig utarbeidede standardvilkår. Regelen vil derfor ha størst anvendelse innenfor forbrukerforhold. Når det gjelder standardcertepartier som er utarbeidet med representanter for alle parter/interessegrupper, vil konsipistregelen bare ha begrenset rekkevidda, da det presumeres at det er balanse i kontraktsforholdet, og at partenes interesser er ivarettatt gjennom såkalte ”agreed documents”.

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<sup>20</sup> Møllmann (2007) s. 38

<sup>21</sup> Woxholth (2006) del II kap. 1-5.

<sup>22</sup> *ibid.* s. 434 flg.

<sup>23</sup> Møllmann (2006) s. 65 flg.

Prinsippet om at ”det skrevne går foran det trykte” har for eksempel relevans innenfor befrakningsavtaler ved at partene har byttet ut trykte vilkår med skrevne. Regelen er da at det skrevne går foran det trykte ved motstrid eller annen tolkningstvil. Det kan stilles spørsmål om hvor langt dette prinsippet gjelder i praksis. I alle fall vil situasjoner hvor det skrevne vilkåret synes lite gjennomtenkt, kunne medføre at det trykte likevel får gjennomslag, jfr. ND 1961 s. 127. Saken gjaldt erstatningsansvar i forbindelse med lasteskade på grunnlag av en paramountklausul<sup>24</sup> i et Baltime certeparti. Henvisningen til Haagreglene syntes lite gjennomtenkt og det var heller ikke, objektivt sett, partenes mening å fravike Baltime certepartiets ansvarsregulering.

## 2.2 Engelsk rett

### 2.2.1 Innledning

I motsetning til nordisk tolkningstradisjon er engelsk rett langt mer formalistisk og teknisk i sin tilnærming, og består av en lang rekke prinsipper og ”tester”. I den forbindelse er det tre komponenter i off-hire begrepet som er viktig å få frem<sup>25</sup>. For det første må befrakter kunne verifisere at skipets fulle *operasjonalitet* er blitt avskåret eller forhindret. Dernest må denne hindringen ha en *årsakssammenheng* med de risiki som er listet opp i standardklausulen(e) eller avtalt ved tilleggs klausuler. Endelig må hindringen ha ført til et *tidstap* for befrakteren. Foreligger det ikke et tidstap, skal det ikke trekkes for off-hire. Vilklårene er kumulative. Off-hire vurderingen må starte med det første vilkåret. Dersom det ikke foreligger noen operativ hindring av skipet, er det ingen grunn til å gå videre med å undersøke om det er skipets risiko. Dette ble også stadfestet av Lord Denning i dommen *The Aquacharm* [1982]<sup>26</sup>. Som vi skal se i avsnitt 4 har de ulike certepartiene i sine

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<sup>24</sup> En paramountklausul er en klausul som innfører Haag-Visby reglene om ansvar for skader på skipets last. Reglene regulerer befrakters mulighet til å begrense sitt ansvar for lasteskader.

<sup>25</sup> *Time Charters* (2008) side 442

<sup>26</sup> *The Aquacharm* [1982] 1 Lloyd's Rep. 7

standardklausuler forskjellig ordlyd på dette punkt. For undersøkelsen her blir det sentrale å tolke beskrivelsen av de begivenheter som fører til off-hire.

I tillegg er det i engelsk rett et tydelig skille mellom fortolkning av kontrakten og utfylling eller supplering av denne. Prinsippene vil bli kort omtalt nedenfor. For å oppnå bedre oversikt og systematikk vil fremstillingen skille mellom fortolkning av kontrakten (2.2.2), supplering av kontrakten (2.2.3) og bevisregler (2.2.4).

## **2.2.2 Fortolkning av kontrakten**

Både etter engelsk og norsk rett er utgangspunktet at det er klausulens ordlyd som er avgjørende. I engelsk rett derimot, er det en langt mer streng, språklig fortolkning av de anvendte uttrykk som legges til grunn. Autoritet for dette finner vi i dommen *Lovell & Christmas Ltd v Wall* (1911) 104 Lt 85, hvor det uttales på side 88:

”It is irrelevant and improper to ask what the parties, prior to the execution of the instrument, intended or understood...[U]nless the case can be brought within some or one of [the] exceptions, it is the duty of the court, which is presumed to understand the English language, to construe the document according to the ordinary grammatical meaning of the words used therein, and without reference to anything which has previously passed between the parties to it.”

Engelsk rett er svært tilbakeholdne med å trekke inn forhold som ligger utenfor kontrakten.<sup>27</sup> Det er først når ordlyden er uklar eller fører til motstridende tolkningsløsninger at man søker støtte utenfor ordlyden.<sup>28</sup> Den mer ordlydstro fortolkningen i engelsk rett sammenlignet med norsk rett understrekes også i dommen *ND 1974.186 NV Kingsnorth*, hvor en samstemmig voldgiftsrett på side 195-196 uttaler:

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<sup>27</sup> Poole (2006) s. 252

<sup>28</sup> *ibid.* s. 252-253

”[d]et er voldgiftsrettens oppfatning at kontrakter som er undergitt de nordiske sjølover ikke tolkes så strengt etter ordene som for eksempel etter engelsk rett.”

Rent unntaksvis foretas utvidende eller analogisk fortolkning av for eksempel begivenheter som fører til off-hire. Dette er også en av grunnene til at, særlig tanktidscertepartiene, har lange og uttømmende klausuler som regulerer off-hire.<sup>29</sup>

Gjennom rettspraksis er det i engelsk rett utviklet en rekke prinsipper eller retningslinjer for å stadfeste partenes intensjon med utgangspunkt i kontraktsdokumentet. Interessant i den sammenheng er dommen fra House of Lords i 1998<sup>30</sup> hvor Lord Hoffmann foretok en oppsummering av prinsippene. Dommen er nyskapende på flere punkter<sup>31</sup>. For det første stadfester den at kontraktstolkningen skal baseres på hvorledes en fornuftig utenforstående tredjemann forstår kontrakten. Dette synes å bryte med tidligere oppfatning om partenes felles hensikt og intensjon.<sup>32</sup> Videre åpner Lord Hoffmann for en mer modifisert anvendelse av den såkalte ”parol evidence rule”<sup>33</sup> (jfr. 2.2.4 nedenfor), ved at også opplysninger og bakgrunnsinformasjon utenfor kontrakten kan trekkes inn.<sup>34</sup>

Når det gjelder det konkrete innhold i de engelske tolkningsprinsippene, vil det falle utenfor oppgaven her å gi en uttømmende fremstilling. Jeg vil allikevel kort trekke frem den såkalte ejusdem generis-regelen, som ikke har sitt direkte motstykke i norsk rett. Regelen innebærer at begivenheter, gjenstander eller lignende som inngår i en oppramsing og som har visse fellestrekk, utgjør en gruppe (genus)<sup>35</sup>. Tilfeller som ikke er eksplisitt

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<sup>29</sup> Michelet (1997) s. 339

<sup>30</sup> Investors Compensation Scheme Ltd. v West Bromwich Building Society [1998] 1 WLR 898

<sup>31</sup> Möllmann (2007) s. 42-45

<sup>32</sup> *ibid.* s. 44-45

<sup>33</sup> Forbud mot bevis av forhold utenfor kontrakten.

<sup>34</sup> *ibid.* s. 45

<sup>35</sup> *ibid.* s. 65



opplistet, men som hører inn under samme genus vil da bli innfortolket i kontrakten eller klausulen. Den forutgående oppramsing vil da kunne gi veiledning for tolkning av for eksempel begrepet ”andre tilsvarende forhold på skipets side” basert på ejusdem generis-regelen.<sup>36</sup>

### 2.2.3 Supplering av kontrakten

Engelsk rett har ikke det som tilsvarer begrepet utfylling i nordisk tolkningstradisjon.<sup>37</sup> Men også i engelsk rett vil det kunne skje en supplering av kontrakten. Denne supplering skjer gjennom prinsippene om ”implication of terms”, men som ikke tilsvarer den nordiske begrepet om utfylling. Etter engelsk rett vil utfylling bare skje dersom dette ”are necessary to give business efficacy to the contract as both parties must have intended”.<sup>38</sup> Det er ikke nok å vise til at utfyllingen vil gi et rimelige resultat; fordi ”it is not the function of the court to make the contract for the parties”.<sup>39</sup>

Et vilkår kan suppleres til kontrakten dersom det er ”implied” eller underforstått. Vilkåret kan enten være ”implied by fact”, ”implied by law” eller ”implied by custom or trade usage”.<sup>40</sup> Men det gjelder her strenge regler og spesielle ”tester”<sup>41</sup> for slik supplering, da engelske domstoler er svært tilbakeholdne med å ”skrive” kontrakten for partene ved å supplere med nye vilkår.

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<sup>36</sup> *ibid.* s. 65

<sup>37</sup> Selvig (1986) s. 10

<sup>38</sup> Poole (2006) s. 228 og dommen *The Moorcock* [1889] 14 PD 64, som gir autoritet for prinsippet om ”business efficacy” (Lord Bowen på side 68).

<sup>39</sup> *ibid.* s. 88; Lord Wright på s. 514 i *Hillas & Co. Ltd. v Arcos Ltd.* [1932] 147 LT 503.

<sup>40</sup> *ibid.* s. 224 flg.

<sup>41</sup> To slike tester er ”officious bystander test” og ”business efficacy test”. Førstnevnte test er supplering basert på utenforstående, selvsagte omstendigheter. Den andre er basert på kontraktens operasjonalitet og forretningsmessige effektivitet.

## 2.2.4 Bevisregler

Den formalistiske tilnærmingen og sterke vektleggingen av ordlyden, fører også til at det i engelsk tolkningstradisjon er bestemte og rigide regler for hva som tillates ført som bevis for å klargjøre eller supplere kontrakten. Bevisreglene og hva som kan inkorporeres, står derfor meget sentralt i engelsk rett. Et slikt prinsipp eller regel finner vi i den såkalte "parol evidence rule".<sup>42</sup> Regelen er utviklet i "common law" og innebærer at den skrevne kontrakt representerer den fulle og hele kontrakt mellom partene.<sup>43</sup> Dette betyr at det i engelsk rett ikke tillates ført bevis som er ment å endre, legge til eller motsi de skriftlige vilkår i kontrakten.<sup>44</sup> Det tales da om såkalte "extrinsic" bevismiddel, dvs. at bevisene ligger utenfor kontraktens ordlyd. Jill Poole<sup>45</sup> peker på noen situasjoner hvor "extrinsic" bevismiddel kan aksepteres for å klarlegge hva partene har ment. For det første i tilfeller hvor ord og uttrykk har en teknisk eller spesiell betydning. Det kan eksempelvis være tilfelle innen befraktningsretten og certepartier. Man kan også gå utenfor kontrakten dersom en ren fortolkning etter ordlyden fører til absurde eller sterkt utilsiktede resultater.

En dom som belyser hovedregelen på en utmerket måte er en dom fra 1933 om Hvalfangerselskapet Globus.<sup>46</sup> Saken gjaldt levering av hvalolje i forbindelse med hvalfangst i Antarktis. Spørsmålet i saken gjaldt forståelsen av begrepet "the entire production of whale oil per ss Lancing for the season 1930-31" til Unilever. Det ble lagt frem dokumentasjon over tidligere kontrakter, som kunne kaste lys over hva partene hadde ment. Men House of Lords holdt seg til den konkrete kontrakten, og kom til at leveransen måtte omfatte all produksjon Lancing kunne gjøre også utover egen transportkapasitet.

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<sup>42</sup> *ibid.* s. 208.

<sup>43</sup> Se også Cheshire (1981) på s. 108, hvor dette uttrykkes ved at "the court is usually concerned not with the parties' actual intentions but with their manifested intention".

<sup>44</sup> Se for eksempel *Henderson v Arthur* [1907] 1 KB 10 og *Jacobs v Batavia and General Plantations Trust* [1924] 1 Ch 287 på side 295. Se også Selvig på s. 23: "Hovedregelen blir derfor at partenes mening må klarlegges 'within the four corners of the document in which they have chosen to enshrine their agreement'".

<sup>45</sup> Poole (2006) s. 253.

<sup>46</sup> *Hvalfangerselskapet Globus v Unilever* [1933] 39 Com.Cas. 1 HL på s. 19, 46 L1.L.Rep. 29 på s. 40.

Poenget her var at domstolen kom til at det ikke var adgang til å legge frem slike bevis, jfr. Lord Wrights uttalelse på side 48:

“Indeed, the whole mass of evidence in this case seems to me to confirm the wisdom of the common law in insisting on the rule that the obligations of parties to written contracts should in general be determined by the proper legal construction of the words used, extrinsic evidence being only admitted for limited purposes and in special cases.”

### **3 SÆRSKILT OM TIDSBEFRAKTNING OG OFF-HIRE**

#### **3.1 Allment om tidscertepartier**

Tidsbefraktning er en situasjon hvor eieren av et skip (reder/bortfrakter) stiller skipet med mannskap til disposisjon for en annen part (befrakteren eller tidsbefrakteren) for en nærmere bestemt periode. Bortfrakter får betalt frakt pr. tidsenhet, typisk pr. måned forskuddsvis. Instrumentet, dvs. selve kontrakten, kalles et tidscerteparti.

En særegenhet for tidscertepartikontrakter er selve måten kontraktene er blitt til på<sup>47</sup>. Det kan skilles mellom kontrakter som kan være ensidig utarbeidet av den ene part, og kontrakter som er utarbeidet av representanter for begge parter/grupper som skal anvende formularet. Eksempler på førstnevnte er oljeselskapenes formularer; Shelltime 4, Texacotime osv. Eksempler på den andre gruppen er Scancon, hvor partene i fellesskap har kommet frem til såkalte ”agreed documents”<sup>48</sup>.

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<sup>47</sup> Falkanger (1997) side 289 flg.

<sup>48</sup> Bull (1988) s. 99 flg.

### **3.2 Kort om partene i certepartiforholdet og deres forpliktelser**

Partene i et certepartiforhold benevnes ”bortfrakter” (oftest eier av skipet) og ”befrakter” (skipets rådighetshaver). Ved tidsbefraktning anvendes hhv. begrepene ”tidsbortfrakter” og ”tidsbefrakter”. Bortfrakter er den som skal prestere realytelsen og blir realdebitor i kontraktsforholdet. Det er han som har ansvar for å utruste og bemanne skipet og sette det i drift. Hans primærytelse er å stille skipet til disposisjon overfor befrakteren i henhold til avtalt sted og tid og i avtalt stand, jfr. sjøl. § 372. Brudd på denne regelen kan gi befrakter grunnlag for å kreve erstatning, jfr. sjøl. § 377. I tillegg har bortfrakter normalt også en omsorgsforpliktelse<sup>49</sup> gjennom løpende vedlikehold og tilsyn av skipet under kontraktens løpetid.

Befrakters primære forpliktelse er å betale den avtalte frakt i henhold til certepartiet, jfr. sjøloven § 390. Han blir realkreditor i kontraktsforholdet og har vederlagsforpliktelsen. Forsinket betaling av tidsfrakten gir tidsbortfrakteren rett til forsinkelsesrenter, jfr. sjøloven § 391. Dersom fraktbetalingen uteblir etter 72 timers varsel, kan tidsbortfrakteren heve avtalen, jfr. sjøloven § 391 annet ledd.

### **3.3 Nærmere om off-hire**

Off-hire innebærer at skipet har vært uvirksom for en periode under tidscertepartiet. At skipet har vært uvirksomt innebærer at hun ikke har kunnet operere som forutsatt for befrakteren. Sagt på en annen måte: befrakterens rådighet over skipet har blitt avbrutt. Dette kan skyldes f. eks. at skipet har vært ute av drift, utførelse av vedlikehold eller dokking. Befrakter skal da ikke betale tidsfrakt for den uvirksomme perioden, og innrømmes da et fradrag i tidsfrakten, jfr. sjøloven § 392. Det er et vilkår for fradrag for off-hire at det foreligger et tidstap for befrakteren. Dersom det bare har oppstått en hindring, men intet tidstap, skal det ikke trekkes for off-hire. Se for eksempel ND 1921.577

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<sup>49</sup> Krokeide (1977) s. 637-638.

(Bergen Sjørett), hvor et skip benyttet et opphold i havn til å utbedre noe sjøskade. Skipet ble ikke ansett å være off-hire.

Når det gjelder tidstapet som sådan, har de fleste certepartier terskelverdier før off-hire begivenheten blir relevant.<sup>50</sup> Dette innebærer at off-hire hindringen må overstige denne verdien for at tidstapet skal medregnes. Men varer off-hire hindringen lenger enn terskelverdien, teller hele tidstapet med i beregningen uten fradrag for terskelverdien<sup>51</sup>. Sentralt her er at det er selve hindringen som må overstige denne verdien. Det er altså ikke tidstapet som må vare lenger enn terskelverdien.<sup>52</sup> Har for eksempel en hindring i Baltime certepartiet vart lenger enn 24 timer, skal hyren fratrekkes for det tidstap som derved oppstår, selv om dette bare er et par timer.

Off-hire instituttet kan ses på som et unntak fra hovedregelen om at fraktbetalingen løper kontinuerlig og er betalbar uten betingelser under certepartiperioden. Den bygger ikke på skyld, og krever ikke at årsaken til tidstapet kan bebreides bortfrakteren eller hans folk. Det er en objektiv fradragsregel for tidstap p.g.a. "tidsbortfrakterens forhold", jfr. sjøl. § 392. Jeg kommer nærmere tilbake til de enkelte off-hire klausulene i avsnitt 4 nedenfor.

Tanken bak off-hire instituttet er at befrakteren ikke skal betale for en ytelse han ikke får. Klarer ikke reder å holde skipet operativt, slik at befrakteren fullt ut kan utnytte det, skal han heller ikke betale for den uvirksomme perioden. Fradrag for off-hire krever avtale eller lovhjemmel.<sup>53</sup> Men off-hire kan også være utslag av alminnelige kontraktsrettslige

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<sup>50</sup> For eksempel har Baltime 24 timer før tidstapet begynner å telle, Shelltime har 3 timer, mens STB time har en 12 timers terskel.

<sup>51</sup> Falkanger/Bull (2004) s. 391.

<sup>52</sup> Michelet (1997) s. 345.

<sup>53</sup> *ibid.* s. 333.

prinsipper, jfr. ND 1952.422 (Hakefjord). Voldgiftsretten begrunnet sin avgjørelse med at sjølovens bestemmelse ga uttrykk for alminnelige kontraktsrettslige prinsipper.<sup>54</sup>

Etter norsk rett er det sentrale i off-hire vurderingen hvorvidt avbruddet i befrakters rådighet over skipet skyldes ”*bortfrakterens forhold*”, som typisk er sammenfallende med klausulenes oppregnede off-hire begivenheter. Sjøloven gir her uttrykk for en regel om fordeling av risiko mellom partene. Dersom det er forhold på bortfrakterens ”side”, vil han være økonomisk ansvarlig for det oppståtte tidstap. Derimot hvis det er forhold på befrakters ”side”, er skipet ikke off-hire. I norsk kontraktsrettstradisjon betegnes en slik risikomodell basert på forsinkelse i kontraktsavviklingen, som ”vederlagsrisiko”.<sup>55</sup>

## **4 STANDARD OFF-HIRE KLAUSULER**

### **4.1 Bakgrunn og behovet for klausulreguleringer**

Beskrivelsen av de begivenheter som fører til off-hire blir helt sentral for om skipet er å anse som ”uvirksom” eller ikke. Inntreer en slik begivenhet, er utgangspunktet at da har befrakter rett til gjøre fratrekk i fraktbetalingen. Off-hire begivenheter kan også sammenlignes med kjøpers misligholdsbeføyelser i kjøpsretten. Dersom selger ikke leverer kontraktsmessig vare, har kjøper krav på prisavslag eller han kan heve dersom det foreligger en vesentlig mangel, jfr. kjøpsloven § 30 flg. Sett på denne bakgrunn er off-hire et institutt som er ment å skape balanse i kontraktsforholdet. Når skipet ikke er til rådighet for befrakteren, eller ikke er i den stand som er avtalt, er det ikke mer enn rett og rimelig at hans betalingsforpliktelse opphører inntil skipet er tilbake i ”virksom” tjeneste.

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<sup>54</sup> Dommen side 448

<sup>55</sup> Solvang (2008) s. 75. Se også Krüger (1989) s. 141.

Gjennom stadige revisjoner og utvidelser av standard-certepartiene er risikofordelingen mellom partene gjennom off-hire klausulene blitt endret – dels basert på erfaringer og dels på domspraksis. De tradisjonelle off-hire begivenhetene har blitt utvidet med eksterne begivenheter; dvs. begivenheter som ikke gjelder skipet som sådan. Særlig gjelder dette forhold med årsak i topografi og politisk risiko. Vi ser bl.a. utslag av dette i Baltime 1939<sup>56</sup> klausul 11(B). Dette er en spesialbestemmelse som sier at visse forhold *ikke* skal medføre off-hire; for eksempel anløp i elver eller havner med grunner. For slike begivenheter skal befrakter ha forsinkelsesrisikoen. Tilsvarende ser vi også i de såkalte Produce certepartiene<sup>57</sup> (NYPE). Her er det i NYPE 93 klausul 17 nå inntatt en klausul om fratrekk for off-hire dersom det blir tatt arrest i skipet.

Her nevnes kort at oljeselskapene sine egne certepartiformularer. For eksempel har Shell sitt Shelltime, BP har sitt BP Time, Exxon sitt STB-Time, Texaco sitt Texacotime osv. Disse formularene vil normalt være befraktervennlige. Utslag av oljetransportens spesielle behov finner vi bl.a. i Shelltime 4 klausul 21 (a) (i) om at tidstap for gassfrigjøring og ved å vente på å gå i tørrdøkk, også skal bæres av rederen. Et tilsvarende utslag finner vi også i ”sekkeposten” i samme klausul (ii) om off-hire i forbindelse med ”industrial action”.

## 4.2 Utvalget av off-hire klausuler

Nedenfor er følger en kort omtale/presentasjon av de standard off-hire klausuler som vil bli gjenstand for nærmere drøfting. Tematisering rundt selve tolkningen av klausulene følger i avsnitt 7, etter at den rettskildemessige referanserammen først er kartlagt i avsnitt 5.

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<sup>56</sup> Utarbeidet av BIMCO, jfr. nærmere omtale i avsnitt 4.2.1.

<sup>57</sup> Utarbeidet av Association of Ship Brokers and Agents (USA), Inc, jfr. nærmere omtale i avsnitt 4.2.3.

### 4.2.1 Baltime

Organisasjonen BIMCO i København har gjennom sine mer enn 100 års eksistens stått for utarbeidelse av ca 115 dokumentformularer for bruk i den maritime industri<sup>58</sup>. BIMCO har utviklet tidscertepartiet Baltime 1939, hvor vi finner off-hire definisjonen i klausul 11(A).

Ordlyden i klausulen er:

“In the event of drydocking or other necessary measures to maintain the efficiency of the Vessel, deficiency of men or Owners’ stores, breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the Vessel and continuing [...], no hire shall be paid in respect of any time lost thereby during the period in which the Vessel is unable to perform the service immediately required [...].”

Utgangspunktet i 11 (A) er begivenheter som rammer skipet, enten det er faktisk inntruffet off-hire eller forventet off-hire som følge av reders tiltak for å vedlikeholde skipet og lignende. I klausul 11(B) er listet opp noen unntak som *ikke* medfører off-hire. Viktigst her er bestemmelsen om nødhavn på grunn av dårlig vær, eller hindringer knyttet til grunner i elver og havner. Klausulen omfatter også unntak for off-hire ved skader på lasten. På dette punkt finner vi en motsatt løsning i Produce cetepartiet, jfr. 4.2.3.

### 4.2.2 Shelltime

Oljeselskapet Shell har et egenutviklet tidscerteparti i Shelltime 4. Her finner vi off-hire begivenhetene i klausul 21, hvor man i (a) (i) finner de tradisjonelle off-hire begivenheter. Videre dekker klausul 21 (a) (ii) ordrenekt og uaktsomhet i tjenesten hos kaptein og mannskap. 21 (a) (iii) gjelder landsetting av et sykt besetningsmedlem, mens 21 (a) (iv)-(v) omhandler tidstap som følge av mer spesiell karakter; karantene og myndigheters tilbakeholdelse/arrest av skipet.

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<sup>58</sup> Wergeland (1996) s. 38



Klausul 21 (b) hjemler tidstap som følge av at skipet ikke har prestert den garanterte fart ("speed"). I sin natur er dette ikke off-hire, men et erstatningskrav for befrakteren. Men ved at dette står oppført under off-hire, kan befrakter gjøre direkte fradrag i fraktbetalingen og slipper å måtte akseptere motkrav fra bortbefrakter for spart bunkersforbruk<sup>59</sup>. Klausul 21 (c) gjelder deviasjon<sup>60</sup> som ikke er godkjent av befrakter.

#### **4.2.3 Produce certepartiene (NYPE)**

Organisasjonen the Association of Ship Brokers and Agents (USA) står for utviklingen av Produce certepartiene, eller "New York Produce Exchange Form"; forkortet NYPE. Deres siste versjon av tidscertepartiformularet, NYPE 93, har definert sine off-hire begivenheter i klausul 17. Disse er de samme som nevnt i Baltimore 1939 over. I tillegg er uttrykkelig nevnt "fire" og "strike of officers and crew", samt arrest av skipet. Imidlertid finner vi en viktig forskjell mellom Baltimore og Produce certepartiet med hensyn til off-hire som følge av skade på last. Etter Produce er skipet off-hire dersom det foreligger "accident to cargo", mens den motsatte løsningen følger av unntakene i Baltimore klausul 11(B).

#### **4.2.4 STB-Time**

I likhet med Shelltime er også dette et certepartiformular som er ensidig utviklet av et oljeselskap; Exxon. Off-hire bestemmelsen finner vi i klausul 11 (a)-(c). Bestemmelsen er for en stor del sammenfallende med de begivenheter som er definert i Shelltime 4 klausul 21. STB har imidlertid sin "speed/performance" klausul hjemlet i klausul 9, og ikke under off-hire bestemmelsen. Rent praktisk betyr det at befrakter derfor må akseptere bortfrakters motregningskrav på spart bunkers.<sup>61</sup> Poenget er at dersom fart og forbrukssvikt er klausulert under off-hire bestemmelsen, kan befrakter avregne sitt krav ensidig mot tidsfrakten. Tidsbortfrakter må da på eget initiativ fremme motkrav overfor befrakter for

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<sup>59</sup> Michelet (1997) side 337.

<sup>60</sup> Deviasjon er avvik fra seilingsplan.

<sup>61</sup> Michelet (1997) s. 245-246.

eventuell spart bunkers som følge av redusert fart. Likviditetsmessig vil det da være en fordel for befrakteren å ha fart og forbrukssvikt klausulert under off-hire bestemmelsen.

## **5 RETTSKILDEMESSIG REFERANSERAMME**

### **5.1 Norsk rett**

#### **5.1.1 Den norske Sjøloven § 392**

Bakgrunnsretten for tolkningen av off-hire klausuler vil i første rekke omfatte lovteksten i sjølovens § 392, som lyder:

”Tidsfrakt betales ikke for den tid som går tapt for tidsbefrakteren ved berging, vedlikehold av skipet eller utbedring av skade som tidsbefrakteren er uten ansvar for, eller for øvrig på grunn av tidsbortfrakterens forhold.

Tilsvarende gjelder tidsbefrakterens plikt til å dekke utgifter vedrørende skipets drift.”

Bestemmelsen i sjøl. § 392 annet ledd kom til ved revisjonen av sjøloven i 1994<sup>62</sup>, og er i overensstemmelse med de fleste tidscertepartier som i dag er i alminnelig bruk. Hensikten er at i de tilfeller hvor tidsbefrakter ikke har plikt til å betale tidsfrakt, har han heller ikke plikt til å betale for bunkers, havneutgifter og lignende. Dette ble også slått fast i dommen Valo<sup>63</sup> på side 212:

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<sup>62</sup> NOU 1993:36 s. 94

<sup>63</sup> Valo ND 1950.192

”Voldgiftsretten finner det klart at rederiene ikke etter certepartiene har krav på å bruke av tidsbefrakterens bunkers i perioder som det ikke skal betales tidsfrakt for.”

Når det gjelder selve off-hire begivenhetene i første ledd og innholdet i disse, gir begrepene ”berging”, ”vedlikehold” og ”skade” som tidsbefrakteren er uten ansvar for, lite rom for tvil. ”Berging” innebærer situasjoner som følge av deltagelse i bergningsoperasjoner av andre skip. I begrepet ”vedlikehold” ligger all form for verkstedopphold som er bestemt av tidsbortfrakteren, for eksempel at skipet må til verksted for å utføre periodisk kontroll eller klassearbeider. ”Skade” innebærer at skipet blir påført en ytre skade som gjør at skipet blir uvirksomt. Dette kan for eksempel være at skipet får motorhavari, eller skade i forbindelse med kollisjon med et annet skip, og som ligger utenfor de risiki som befrakteren skal bære. I følge forarbeidene skal slike hendelser først og fremst være bortfrakters risiko.

Det sentrale tema i off-hire bestemmelsen er vurderingen av ”tid som går tapt [...] på grunn av bortfrakterens forhold”. I denne vurderingen ligger implisitt krav om at det må foreligge en årsakssammenheng mellom off-hire hindringen og de risiki (begivenheter) som omfattes av bestemmelsen. Hindringen må også ha ført til et faktisk tidstap for befrakteren. På dette punkt er sjølovens system langt mindre rigorøs enn den formalistiske tredelingen vi finner i engelsk kontraktstolkning, jfr. kapittel 2.2.1.

### **5.1.2 Norsk/nordisk rettspraksis**

Rettspraksis som undersøkelsen baserer seg på er først og fremst hentet fra Nordiske Domme i Sjøfartsanliggender (ND), slik disse er publisert og elektronisk tilgjengelig på Lovdata. Tilsvarende er svenske dommer hentet fra databasen Rättsbanken, mens de danske dommene er hentet fra databasen UfR.

### 5.1.3 Annen relevant bakgrunnsrett

Opplistingen ovenfor er på ingen måte ment å være uttømmende hva gjelder relevant bakgrunnsrett for den norske juridiske tolkningsmetode. I utgangspunktet vil all norsk lovgivning være relevant, og virke som et bakteppe i tolkningsprosessen og utfylle der hvor kontrakten er taus eller uklar. Tilsvarende kan også alminnelige obligasjonsrettslige prinsipper ha relevans for kontraktstolkningen.<sup>64</sup>

## 5.2 Engelsk rett

Som nevnt under avsnitt 1.2 over er engelsk rett et såkalt ”common law” regime. Derfor er rettsreglene domstolsskapte. Når det nedenfor refereres til engelsk rett, belyses dette ved å trekke frem relevante dommer som skaper autoritet for tolkningsløsningen.

Engelsk rett er toneangivende innen befraktningsretten. Dette har sammenheng dels med at kontraktsformularene er utarbeidet av internasjonale organisasjoner, og dels med at kontraktsskriverne svært ofte er hjemmehørende innenfor det engelske språk- og rettsområde<sup>65</sup>. Engelsk benyttes ofte for å gjøre kontraktsformularene mer kjent og anvendbare internasjonalt. På den bakgrunn velges ofte engelsk rett i lovvalgsklausulene. Dette vil kunne ha rettslig betydning for tolkning og utfylling etter norsk bakgrunnsrett. Kjernespørsmålet blir da: skal man i kontrakter underlagt norsk rett løse tolknings- og utfyllingsspørsmål i samsvar med norsk kontraktstradisjon, eller skal det legges til grunn den engelske oppfatning av tilsvarende klausuler? Til syvende og sist er dette et spørsmål om en slik indirekte inkorporering av engelsk rettspraksis strider mot norsk rettsfølelse. En nærmere tematisering rundt dette vil bli gitt avslutningsvis i avsnitt 9.

Når det gjelder rettspraksis fra engelsk rett, er dette i det vesentlige hentet fra databasene ”i-law” og ”Westlaw”, som er tilgjengelige via UiO. Begge publiserer rettsavgjørelser og

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<sup>64</sup> Hagstrøm (2004) S. 209-210

<sup>65</sup> Selvig (1986) s. 1

voldgiftsdommer fra Lloyd's Law Reports, mens Westlaw i tillegg publiserer domssamlingen American Maritime Cases.

## 6 TOLKING AV OFF-HIRE KLAUSULER

### 6.1 Skipets operative funksjon – "the full working of the vessel"

Utgangspunktet er her Baltimore 1939 klausul 11 (A) som lyder:

"In the event of drydocking or other necessary measures to maintain the efficiency of the vessel, deficiency of men or Owners' stores, breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the vessel and continuing for more than twentyfour consecutive hours, no hire to be paid in respect of any time lost thereby during the period in which the Vessel is unable to perform the service immediately required. Any hire paid in advance to be adjusted accordingly."

Vi finner tilsvarende klausuler Nype 93 klausul 17, Shelltime 4 klausul 21 (a) (i) og STB time klausul 11 (a).

Felles for disse bestemmelsene er at hyren slutter å dreie dersom skipets fysiske tilstand gjør at det ikke lenger kan operere effektivt under befrakterens rådighet. Forutsetningen er at det her gjelder forhold på skipets side; dvs. forhold som kan henføres til skipet eller dets mannskap.<sup>66</sup>

Spørsmålet blir da for det første forståelsen av begrepet "**prevent the working of the vessel**", dvs om skipet er blitt hindret i å kunne operere som forutsatt. Dette gjelder selve off-hire begivenheten og er det første man må ta stilling til. Deretter blir det spørsmål om årsakssammenheng mellom den aktuelle begivenheten og de risiki som klausulen omfatter. Til slutt blir det en vurdering av hvorvidt det har oppstått et tidstap for befrakteren, og i fall

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<sup>66</sup> Michelet (1997) s. 333 flg.

hvor stort tidstapet blir. Disse spørsmål vil bli problematisert nedenfor i lys av den metodiske tilnærming som ble skissert i avsnitt 1.2.

### 6.1.1 En naturlig forståelse av ordlyden

Utgangspunktet er en naturlig og objektiv ordlydsforståelse av klausulteksten.

Når det konkret gjelder forståelsen av begrepet ”hindring or preventing the working of the vessel”, er det grunn til å tro at det her siktes til en hindring på skipets side, dvs. hindringen må kunne henføres til bortfrakteren eller noen av de som identifiseres med ham. Dette i motsetning til hindringer som kan henføres til befrakters side, som for eksempel trafikkopphopning i havner eller forsinkelse p.g.a. dårlig vær. Avgjørende vil her være at rederen ikke klarer å holde skipet operativt, slik at befrakteren ikke kan bruke skipet som forutsatt. På dette punkt synes det ikke å være rom for ulikheter i forhold til sjølovens system. Jeg viser derfor til drøftelsen i 6.1.2 under.

På noen viktige punkter avviker de ulike off-hire klausulene fra hverandre. I Nype 93 certepartiet linje 225 er angitt ”...or by any other *similar cause* [min utheving] preventing the full working of the vessel...”. Tilsvarende finner vi i Shelltime 4 linje 345; “...any other *similar cause* [min utheving] preventing the efficient working of the vessel...”. Utrykket “similar cause” finner vi ikke i Baltime og STB certepartiene. En naturlig språklig forståelse av begrepene tilser at det her menes begivenheter som er av samme slag som de forannevnte. Tilføyelsen gir uttrykk for den såkalte ejusdem generis-regelen, som har fått gjennomslag i engelsk rett men ikke i norsk rett. Rent konkret innebærer prinsippet at når ”similar cause” blir nevnt etter opplistingen av off-hire begivenhetene, og disse har visse fellestrekk slik at de utgjør en gruppe (genus), vil en begivenhet defineres som off-hire dersom den kan henføres til samme genus som de opplistede i klausulteksten.<sup>67</sup> For eksempel i Shelltime 4 vil tilbakeholdelse av et skip på grunn av at klassen nekter å fornye

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<sup>67</sup> Møllmann (2007) s. 65.

et av skipets sertifikater etter maskinhavari (mangelfull reparasjon), trolig falle inn under "maintenance or survey" (linje 209) etter ejusdem generis-regelen.

I praksis vil problemer lett kunne oppstå knyttet til hvorvidt det foreligger et genus, og således at regelen overhodet kommer til anvendelse. Det faller utenfor oppgaven her å drøfte dette nærmere.

Et forhold som bør nevnes er at i praksis hender at partene endrer klausulen ved å overstryke "similar" og ersatte dette med ordet "whatsoever".<sup>68</sup> En slik endring kan medføre at bortfrakteren får et økt ansvar ved at han i utgangspunktet kan bli ansvarlig for off-hire begivenheter som er eksterne i forhold til skipet, for eksempel dårlig vær, kanal og tidevannsforskjell, trafikkork i havn og andre fysiske hindringer samt inngripen fra tredjepart (myndigheter og lignende).<sup>69</sup>

I Baltimere certepartiet på side 168 og STB på side 297 tilsvarende uttrykt gjennom sekkeposten "...or other accident...". Denne formuleringen har tradisjonelt ikke blitt ansett til å omfatte tilfeller hvor ejusdem generis-regelen kan anvendes. Denne formulering har derfor en selvstendig betydning, dvs. den er ikke avledet av oppramsing i teksten foran. For at en begivenhet skal falle innenfor dette begrepet, må det foreligge en "accident", dvs. at off-hire begivenheten må kunne henføres til noe som har skjedd utenom det vanlige og helt tilfeldig. Men det trenger ikke være i betydningen ulykke. For eksempel vil en grunnstøting i en elv omfattes av begrepet.

Et annet spørsmål som kan skape tolkningstvil er forståelsen av begrepene "preventing the *full* working..." i NYPE 93 (linje 225) og "preventing the *efficient* working..." i Shelltime 4 (linje 210). Basert på en naturlig forståelse av begrepene henspiller dette på situasjoner

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<sup>68</sup> Thomas (2008) s. 146. Se også *The Laconian Confidence* [1997] 1 Lloyd's Rep. 139, jfr. dommer Rix på s. 151: "... if an owner wishes to limit the scope of causes of off-hire under a clause which is deliberately amended to include the word "whatsoever", then he should be cautious to do so."

<sup>69</sup> *ibid.* s. 146

hvor skipet bare delvis er satt ut av sin fysiske, operative funksjon. Men selv om skipet delvis er forhindret fra å operere, kan muligens andre oppgaver utføres tilfredsstillende. I så fall er ikke skipet forhindret fra "...the full working...". For eksempel når skipet har fått maskinhavari og ligger i havn. Da kan skipet ikke seile, men kan likevel utføre laste/losseoperasjoner. Dersom det er laste/losseoperasjoner som kreves av henne, vil skipet således i denne perioden ikke omfattes av begrepet "preventing the full working...". Illustrasjon for dette finnes bl.a. i saken om Berge Sund.<sup>70</sup> Her gjaldt saken hvorvidt skipet som følge av ekstra rengjøring av tankene i lastehavnen. Off-hire klausulen hadde ordlyden "...or any other cause preventing the efficient working of the vessel". Ankeinstansen opphevet avgjørelsen av voldgiftsretten og fant at skipet ikke var forhindret fra å utføre sin neste (dvs. umiddelbart forestående) operasjon, som var tankrengjøring og ikke lasting. For denne tjenesten (tankrengjøring) var skipet fullt ut operativ.

Av dette følger motsetningsvis at det etter omstendighetene vil kunne oppstå en off-hire situasjon dersom for eksempel skipets maskin ikke er ferdig reparert innen skipet er ferdig utlosset. I Baltimere charterpartiets off-hire klausul linje 173-174 er dette formulert gjennom ordlyden "...unable to perform the service immediately required...". Dette kan sies å utgjøre en "relativisering" av off-hire begrepet, idet begivenheten ses i forhold til den service som konkret og umiddelbart kreves av skipet, jfr. saken Berge Sund over.

### **6.1.2 Norsk rett sammenholdt med engelsk rett**

Utgangspunktet i norsk rett vil være at man først undersøker charterpartiets klausuler når man skal avgjøre om en begivenhet bevirker off-hire eller ikke. Dette prinsippet fremkommer klart i sjøl. § 322 første ledd. Når klausulen er uklar, vil det være naturlig å overveie betydningen av sjøl. § 392. Bestemmelsen reiser særlig to spørsmål. For det første hvorvidt bestemmelsen overhodet kommer til anvendelse når charterpartiet har en off-hire klausul. Dernest hva som ligger i begrepet "tidsbortfrakterens forhold", som er det helt sentrale i bestemmelsen.

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<sup>70</sup> The Berge Sund [1993] Lloyd's Law Reports 2 Lloyd's Rep. 453



Det første spørsmålet er et spørsmål om tolkningslæren og dens anvendelse. Etter norsk tolkningstradisjon skal det ved tolkning av kontrakter legges et helhetlig syn til grunn, jfr. kapittel 2.1. Her står domstolene og andre rettsanvendere står relativt fritt til å trekke inn relevant deklatorisk lovgivning for å fylle ut kontrakten.

Det andre spørsmålet, derimot, skaper en del problemer. Saken i dette avsnittet dreier seg om hvilken løsning en isolert anvendelse av sjøloven § 392 vil gi. Vil den hindring som bevirker et tidstap være "tidsbortfrakterens forhold" eller ikke? Loven gir ingen direkte anvisning på hva som menes med begrepet, men nevner noen eksempler. Tidsbefrakteren er ikke ansvarlig for tidstap knyttet til berging, løpende vedlikehold av skipet eller utbedring av skade som tidsbefrakteren er uten ansvar for. Hvorvidt det foreligger en hindring som medfører off-hire, er ikke avhengig av skyld. Ligger tidstapsårsaken først på bortfrakterens side, er det likegyldig hva som har forårsaket tapet. Dette i kontrast til arbeidsgiveransvaret i skadeserstatningsloven (nr. 26 av 13. juni 1969) § 2-1, hvor arbeidsgiveren blir ansvarlig for den ansattes *culpøse* handlinger i tjenesten. I befraktningsforhold kan også andre personer enn mannskapet etter omstendighetene bli identifisert med bortfrakteren og således medføre at skipet går off-hire. Dette vil være personer som utfører oppgaver/tjenester på vegne av rederen (kontraktsmedhjelpere).

Unntaket er dersom det foreligger skade på skipet som skyldes "feil eller forsømmelse av tidsbefrakteren eller noen han svarer for", jfr. sjøl. § 385. Et slik unntak kan for eksempel foreligge dersom skipets kraner ikke fungerer 100 %, og dette skyldes befrakteren eller hans hjelpere har kjørt disse for hardt gjennom uaktsomhet.<sup>71</sup> Skipet er da ikke off-hire etter § 392 på grunn av at det er et forhold på befrakterens side. Frakten fortsetter å løpe.<sup>72</sup>

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<sup>71</sup> Falkanger/Bull (2004) s. 336.

<sup>72</sup> *ibid.* s. 390.

Andre eksempler kan nevnes når skipets kraner ikke yter 100 %, og skipet av den grunn bruker lengre tid på lastning/lossing. Da vil det foreligge en off-hire situasjon på bortfrakterens side knyttet til merbruk av tid i forhold til om kranene hadde operert kontraktsmessig. På den annen side vil redusert kapasitet på kranene ikke medføre off-hire under selve sjøreisen<sup>73</sup>, fordi skipet da ikke er forhindret i å utføre den aktuelle service/oppgave (dvs. selve sjøreisen).

Et eksempel på en fortolkning basert på sjølovens off-hire bestemmelse finner vi i saken om Hakefjord<sup>74</sup>. Saken gjaldt kapteinens feilvurderinger i forbindelse med værforhold, og at skipet ble forsinket som følge av denne feilvurdering. Her ble off-hire klausulen i Baltime certepartiet supplert med den tidligere bestemmelsen i sjøl. § 144 (nå § 392). Tolkningen av kapteinens vurderinger av værforholdene som grunnlag for at skipet ble liggende i havn, var ugrunnet og ble ansett å være et forhold på ”tidsbortfrakterens side”. Voldgiftsretten begrunnet sin avgjørelse med at sjølovens bestemmelse ga uttrykk for alminnelige kontraktsrettslige prinsipper<sup>75</sup>. Dvs. at når skipet uten rimelig grunn ble liggende i havnen, var tid tapt på bortfrakterens side. Utgangspunktet om at tidstap på grunn av værforhold er befrakterens risiko ble derfor fraveket her. Begrunnelsen som ble gitt var at det forelå brudd på kapteinens alminnelig plikt til å utføre reisen ”with the utmost despatch”, og at dette måtte innfortolkes i sjøl. § 144 (2). Retten mente at den avtalte klausulen i Baltime certepartiets 11(A) var uten betydning i denne sammenheng, og viste på side 448 til voldgiftsdommen i ND 1950.398 s. 404 (Karmøy, kommentert nedenfor).

Domstolen gir også uttrykk for på side 448 at det går en grense for hvor fritt kapteinen står i sine nautiske avgjørelser, og at et der ”et sted må være en grense”. Samtidig er dommen et uttrykk for at norsk lov etter omstendighetene kan slå igjennom overfor det partene har avtalt i certepartiet.

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<sup>73</sup> *ibid.* s. 391

<sup>74</sup> ND 1952 s. 422

<sup>75</sup> *ibid.* s. 448

En tilsvarende anvendelse av sjølovens off-hire bestemmelse finner vi i Karmøy-saken; ND 1950.398. Saken her gjaldt tidstap i forbindelse med innredning av mannskapslugarer for tyske mannskaper etter påbud fra tyske marinemyndigheter. Voldgiftsretten fant at forsinkelsen var et forhold på bortfrakterens side. Begrunnelsen var bl.a. at innredning av mannskapslugarer var en omstendighet som hindret bortfrakteren å oppfylle sin del av kontrakten, nemlig å stille og holde et kontraktsmessig skip til befrakterens disposisjon. Dette var således et forhold på bortfrakterens side.<sup>76</sup>

Dommen ble også begrunnet med at hindringen (innredningen av mannskapslugarene) var ”necessary to maintain the efficiency of the vessel”, og således en hindring på skipets side. Her finner vi et obiter dictum på side 403, hvor voldgiftsretten tok forbehold om at dersom befrakteren har foretatt en spesiell anvendelse av skipet og dette har foranlediget hindringen, vil det ikke foreligge en hindring på bortfrakterens side, selv om dette rammer selve skipet. Dette samsvarer også med unntaket i off-hire bestemmelsen, jfr. ordlyden ”...som tidsbefrakter er uten ansvar for ...”.

Etter engelsk gjelder et helt annen tilnærming til off-hire klausulen sammenlignet med sjølovens system. Det finnes ingen supplerende regel med innhold som sjøl. § 392 i engelsk rett. Heller ikke er det hjemmel til å foreta generell rimelighetssensur av kontrakten. Utgangspunktet er at det er kun de off-hire begivenheter som er regnet opp i klausulen som det skal tas hensyn til. Dette innebærer en streng ordlydsfortolkning. Autoritet for dette finner vi bl.a. i dommen *Ilissos*<sup>77</sup>. Saken gjaldt et skip som ble oppholdt pga. mannskapet under krigen nektet å gå fra Newcastle med mindre skipet gikk i konvoi. De gjennomførte en sit-down streik, men mannskapet var ellers fulltallig. Retten kom til at dette ikke var ”deficiency of men”, etter at de hadde foretatt en streng fortolkning av ordlyden i certepartiet.

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<sup>76</sup> Dommen s. 401.

<sup>77</sup> *Royal Greek Government v. Minister of Transport* [1948] 81 Lloyd’s Rep. 355, se også [1948-1949] 82 Lloyd’s Rep. 196.

Etter engelsk rett benytter man en sterk metodisk tilnærming til fortolkningen. Denne tilnærmingen består av en rekke tester underveis. Først sjekker om skipet har blitt hindret ("prevented") som følge av begivenheten. Bare dersom skipet faktisk er blitt forhindret, går man videre og sjekker årsakssammenhengen mellom det inntrufne og de risiki som er opplistet i klausulen. Dette er bl.a. slått fast i en dom fra den engelske ankedomstolen, jfr. *Aquacharm*<sup>78</sup>, hvor Lord Denning uttaler på side 9:

"We are to inquire first whether the "full working of the vessel" has been prevented. Only if it has, do we consider the "cause".

I spørsmålet om det foreligger en situasjon med "preventing the full working of the ship", ligger en vurdering/test av om skipet er i stand til å utføre neste operasjon/tjeneste som kreves av henne, jfr. ordlyden i *Baltim* 1939 klausul 11 linje 173-174. Autoritet for dette finner vi i dommen *Berge Sund*<sup>79</sup>, hvor skipets kunne utføre sin neste operasjon, som var tankrengjøring.

Ytterligere autoritet for dette finner vi den eldre engelske dommen om *Westfalia*<sup>80</sup>. Her var skipet sluttet på time under et New York Produce certeparti. Skipet fikk maskinhavari under reise fra Vest-Afrika til lossehavn i Tyskland. Skipet kunne ikke repareres i Las Palmas og måtte taues til Harburg, som var skipets lossehavn. Skipet foretok kontraktmessig lossing i Harburg. House of Lords kom til at skipet var off-hire under slepet fra Las Palmas til Harburg, men flertallet kom til at skipet ikke var off-hire under lossingen i Harburg. Begrunnelsen var at skipet under lossing var i effektiv stand til å utføre den operasjon som hun forutsetningsvis skulle utføre.

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<sup>78</sup> *The Aquacharm* [1982] 1 Lloyd's Rep. 7.

<sup>79</sup> Kommentert under 6.1.2.

<sup>80</sup> *Hogarth (Hugh) and Owners of Westfalia v Miller (Alexander) Brother & Co., (H.L.)* [1891]

Skipets "full working" kan også bli hindret av lovmessige eller administrativ inngripen fra myndigheter eller tredjeperson, jfr. *The Laconian Confidence*<sup>81</sup>, hvor Judge Rix uttalte på side 150:

"In my judgment therefore, the qualifying phrase "preventing the full working of the vessel" does not *require* the vessel to be inefficient in herself. A vessel's working may be prevented by legal as well as physical means, and by outside as well as internal causes. An otherwise totally efficient ship may be prevented from working. That is the natural meaning of those words, and I do not think that there is any authority binding on me that prevents me from saying so."

Spørsmålet under engelsk rett blir da om hindringen i off-hire sammenheng forutsetter at denne relaterer seg til skipets fysiske ineffektivitet. Dette spørsmålet var kjernen i *Laconian Confidence*. Saken gjaldt et skip som var sluttet på TC trip fra Yangon til Bangladesh på et New York Produce certeparti. Skipet ble forsinket i 18 dager på grunn av byråkratisk sommel fra havnemyndighetene i forbindelse med tillatelse til uttømming av avfall. Domstolen kom til at forholdet ikke representerte en hindring i certepartiets forstand. Dette til tross for uttrykket "any other cause" i klausulen. Begrunnelsen var at tilfellet var klart uvedkommende for skipet; i det begivenheten måtte være knyttet til skipets fysiske funksjonalitet, mannskapet eller lasten. Derfor falt hindringen utenfor klausulens naturlige virkeområde.

I samme kategori som "full working" kan nevnes begrepet "...preventing the *efficient* working...", jfr. Shelltime 4 klausul21 (a) (i). Saken *The Bridgestone Maru No. 3*<sup>82</sup> er en illustrasjon på hvordan engelske domstoler tolket begrepet. Saken gjaldt et skip som var sluttet på et Shelltime 3 certeparti. Ved ankomst Livorno i Italia ble skipet nektet godkjent av havnemyndighetene på grunn at skipets pumpeanlegg ikke tilfredsstilte sikkerhetsforskriftene fra italienske sjøfartsmyndigheter (RINA). Skipet ble nektet å losse. Judge Hirst fant at skipet var off-hire og uttaler på side 83:

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<sup>81</sup> *The Laconian Confidence* [1997] 1 Lloyd's Rep. 139.

<sup>82</sup> *Bridgestone Maru No. 3 –International Ltd v. Trans-Offshore Inc.* [1985] 2 Lloyd's Rep. 62 QB

” The cause of refusal to allow the vessel to discharge was the failure of the pump to comply with the RINA regulations in that it was unfixed. This allegation was a potential challenge to the efficiency of part of the ship's equipment, namely, the portable pump. To adapt the words of Lord Justice Griffiths in *The Aquacharm*, the incapacity of the ship to discharge was attributable to the suspected condition of the ship itself, and as a result the crew could not use the relevant part of the machinery, namely, the pump.”

Begrepet ”efficient working” var også fremme i saken *The Good Helmsman*<sup>83</sup>. Her uttaler Judge Waller i et obiter dictum på side 422:

“The ship and her crew were fully capable of performing the service required of her. She was merely prevented from so doing by the action or inaction of the immigration authorities at Jeddah.”

Av dommene over kan man utlede to ting. For det første kan tilbakeholdelse eller arrest etter engelsk rett både falle inn under ”any other cause”-alternativet, jfr. saken *Laconian Confidence* over, og begrepet ”efficient working”, jfr. *Bridgestone Maru*. For det andre at begrepene ”efficient working”, ”full working” og ”any other cause” henspiller på skipets fysiske egenskaper. Sagt på en annen måte: Inngripen fra myndighetene på grunn av juridiske og/eller administrative regler, vil bare representere en hindring dersom denne kan henføres til skipets fysiske tilstand.

## **6.2 Forhold på mannskapets side; ”deficiency of men”**

I avsnitt 6.1 over så vi på selve off-hire *begivenhetene* og kravet til hindring av skipets operative funksjon. Vi skal nå i avsnittene 6.2 og 6.3 se nærmere på noen utvalgte *årsaker* til off-hire slik disse fremstår i klausulene. Det er ofte her de fleste disputer knyttet til off-hire oppstår.

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<sup>83</sup> *The Good Helmsman* [1981] 1 Lloyd’s Rep. 377

### 6.2.1 En naturlig forståelse av ordlyden

Spørsmålet her gjelder hva som ligger i begrepet ”deficiency of men”. En naturlig språklig forståelse av begrepet ”deficiency of men” tilsier at konsipistene her har ment en mangel eller ufullkommenhet på mannskapets eller skipets kontraktsmedhjelperes side. Det kreves ikke at det er utvist skyld.

Samtlige av undersøkelsens fire certepartier har off-hire klausuler som omfatter begrepet ”deficiency of men” eller tilsvarende. Nype 93 nevner i sin klausul eksplisitt streik blant mannskapet (linje 220), men det er grunn til å anta at streik blant mannskapet også vil omfattes av de øvrige certepartiklausulene, jfr. sekkeposten ”...or any other cause...” eller tilsvarende ordlyd. For øvrig nevnes at i Nype 93 er det tilføyd begrepet ”or default” etter ”deficiency”. Bakgrunnen for denne endringen er trolig å unngå et resultat som i dommen *Ilissos* (jfr. 6.1.2)<sup>84</sup>, hvor et skipet ble oppholdt i Newcastle under krigen fordi mannskapet nektet å seile uten konvoi. Mannskapet var fulltallig til stede, mente retten. Det er også trolig at når off-hire klausulen inneholder en samlekategori av typen ”any other cause...”, så vil dette omfatte en hvilken som helst begivenhet som hindrer skipet og kan henføres til mannskapets side, enten det skyldes ”deficiency”, ”default” eller ”illness”.<sup>85</sup> Herunder kan også begrunnet mistanke om sykdom omfattes av begrepet. Dette ble resultatet i saken om skipet *Apollo*<sup>86</sup>, hvor det forelå mistanke om utbrudd av tyfus og liberianske myndigheter nektet skipet karantenepass. Retten anså dette som ”deficiency of men” og begrunnet sin avgjørelse med at skipet var ”prevented from the full working”<sup>87</sup>

Når det oppstår streik i laste eller lossehavn, er utgangspunktet ved tidsbefraktning at dette er et forhold som befrakteren bærer risikoen for.<sup>88</sup> Det er befrakteren som har det kommersielle ansvaret og som velger seilingsmønster. Dersom, derimot, skipets eget

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<sup>84</sup> Michelet (1997) side 335

<sup>85</sup> Time Charters (2008) kapittel 25.23

<sup>86</sup> *The Apollo* [1978] 1 Lloyd’s Rep. 200

<sup>87</sup> Judge Mocatta på s. 205

<sup>88</sup> Time Charters (2008) kapittel 25.100

mannskap involverer seg i en slik streik, vil risikoen flyttes over på bortfrakteren. Løsningen for befrakteren for unngå for eksempel ITF<sup>89</sup>, er å sette minimumskrav i certepartiet om ITF vilkår. For øvrig ble begrepet ”strike” definert av Lord Denning i saken *New Horizon*<sup>90</sup> på side 317:

I think a strike is a concerted stoppage of work by men done with a view to improving their wages or conditions, or giving vent to a grievance or making a protest about something or other, or supporting or sympathizing with other workmen in such endeavour.”

Sammenfatningsvis kan det konkluderes med at off-hire besemmelsene er lite uttømmende når det gjelder mannskapsmangler.

### **6.2.2 Norsk rett sammenholdt med engelsk rett**

I begrepet ”tidsbortfrakterens forhold” i sjøl. § 392 ligger en identifikasjon gjennom de som direkte er ansatt på skipet. Begrepet ”deficiency of men” vil etter sjølovens system klart omfatte selve mannskapet og kapteinen. For eksempel vil streik blant mannskapet vil i utgangspunktet være et forhold på bortfrakterens side. På den annen side er det befrakterens sak å ordne med lasting og lossing under tidscertepartier. Dersom han for eksempel får problemer med å få lasten frem til lasteplassen på grunn av streik blant lastearbeiderne, vil dette være et forhold på befrakterens side. Tidstap som derved oppstår vil da ikke medføre at skipet går off-hire.

Her er interessant å sammenligne med resultatet i dommen *Ilissos* (jfr. avsnitt 6.1.2), som av engelsk domstol ikke ble ansett å være off-hire ved sit-down streik blant mannskapet. Basert på en fortolkning av sjøl. § 392 er det trolig at en slik streik vil anses som ”deficiency of men”, og således en mannskapsmangel som faller inn under begrepet ”tidsbortfrakterens side”.

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<sup>89</sup> International Transport Workers Federation, som arbeider for likverdige og sikre arbeidsvilkår for sjøfolk.

<sup>90</sup> *New Horizon* [1975] 2 Lloyd's Rep. 314



Mannskapsmangler under ”tidsbortfrakterens forhold” ble resultatet i voldgiftsdommen om Hakefjord<sup>91</sup>, hvor skipet var sluttet på et Baltimerteparti. Her gjaldt saken at skipets kaptein hadde besluttet å legge skipet fore uten at værforholdene tilsa det. Retten kom til at dette var ”deficiency of men” og således et forhold på bortfrakterens side. Begrunnelsen var at selv om befrakter i utgangspunktet bærer forsinkelsesrisikoen knyttet til værforhold, så går det en grense når kapteinen kan klandres for ikke å ha vært aktsom nok i sin vurdering. En slik løsning ville også følge av alminnelige kontraktsrettslige prinsipper, i følge domstolen.<sup>92</sup>

En annen dom fra Sjø- og Handelsretten i København om skipet Tora<sup>93</sup>, illustrerer en situasjon hvor funksjonsfordelingen og bruken av mannskapet kom på spissen. Saken gjaldt rengjøring av tanker for å kunne ta inn ny last i Rotterdam. Arbeidet ble utført i sjøen av mannskapet og etter instruksjon fra befrakteren. Ved ankomst var rengjøringen ikke tilstrekkelig og det måtte beordres ytterligere rengjøring. Skipet ble av domstolen ikke ansett for å være off-hire i denne ekstra rengjøringsperioden. Begrunnelsen var at arbeidet skjedde under instruksjon fra befrakteren og at tankrengjøring var en befrakteroppgave.

Basert på dommene over er det grunn til å hevde at under norsk rett foretas det en bred og helhetlig vurdering av kontraktsforholdet. Fortolkningen er konkret og man ser på balanseforholdet mellom kontraktspartene, jfr. Hakefjord over.

Når det gjelder den ordlydsbaserte fortolkningen i engelsk rett, finner vi bl.a. autoritet for i dommen om det greske skipet Ilissos<sup>94</sup>. Her ble et skipet oppholdt i Newcastle under krigen fordi mannskapet nektet å seile uten konvoi. Mannskapet var fulltallig til stede, mente retten, og skipet var således ikke off-hire. Her synes tolkningen etter engelsk rett å avvike

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<sup>91</sup> ND 1952.442 NV

<sup>92</sup> *ibid.* s. 448

<sup>93</sup> ND 1993.105 SjøHa

<sup>94</sup> *Royal Greek Government v. Minister of Transport* [1948] 81 Lloyd's Rep. 355, se også [1948-1949] 82 Lloyd's Rep. 196.

klart fra løsningen basert på sjølovens system, jfr. dommen Hakefjord over. Slik sett er for eksempel Baltim certepartiet utvilsomt mer redervennlig<sup>95</sup> når det fortolkes under engelsk rett.

Saken om skipet Apollo<sup>96</sup> kan også her trekkes frem som et utslag av streng engelsk ordfortolkning. Her ble mistanke om tyfus tolket som en mannskapsmangel, og dermed et forhold som medførte at skipet kom i off-hire; jfr. Mr. Justice Mocatta på side 205:

”It is for the owners to provide the ship and the crew to work her and provide the service then required by the charterers. Here the obtaining of free pratique was no mere formality owing to the illness of the two members of the crew, who had to be discharged to hospital at the vessel's previous port of call suffering from suspected typhus...But in the present case the obtaining of free pratique was no mere formality and there was good cause for the careful testing and disinfection that was carried out before free pratique was given involving a delay of 29 1/2 hours.”

Interessant her er det å sammenligne Hakefjord<sup>97</sup> dommen med saken Istros v Dahlström Co<sup>98</sup>. Begge sakene gjaldt spørsmålet om kapteinens vurderinger av værforhold. I saken Istros ble resultatet de motsatte enn i Hakefjord; nemlig at skipet ikke var off-hire etter at det ble forsinket på grunn av kapteinens feilvurderinger av værforholdet. Domstolen fant at man måtte forholde seg til certepartiets (Baltim) klausul 12, og at befrakter i utgangspunktet bærer risikoen for forsinkelser som skyldes værforhold. Skipet ville kun være ansvarlig for slike forsinkelser dersom kapteinen kunne klandres og ikke vært aktsom nok i sin vurdering.

Forskjellen i tolkningsresultat i forhold til Hakefjord-dommen gjenspeiler klare ulikheter mellom norsk tolkningstradisjon og den engelske. Som tidligere påpekt baserer den norske metoden seg på en bred kontraktsrettslig helhetsvurdering av ulike tolkningsmomenter; og

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<sup>95</sup> Gram (1977) s. 195.

<sup>96</sup> The Apollo [1978] 1 Lloyd's Rep. 200.

<sup>97</sup> Kommentert under kapittel 6.1.2.

<sup>98</sup> Istros v Dahlström Co. [1930] 38 Lloyd's Rep. 84

utfyller med bakgrunnsretten når kontrakten er uklar eller taus. Engelsk rett, derimot, fokuserer mer på selve kontraktsdokumentet og den konkrete ordlyden. Dommene viser at man kan komme til ulike resultater basert om man tar utgangspunkt i norsk eller engelsk tolkningstradisjon.

### **6.3 "Detention by average accidents to the Vessel or cargo"**

#### **6.3.1 En naturlig forståelse av ordlyden**

I NYPE 93 finner vi i linje 223 ordlyden:

"...detention by average accident to the vessel or cargo..."

"Detention" betyr her mer enn bare forsinkelse, jfr. saken *The Mareva*.<sup>99</sup> Skipet var sluttet på et Produce (New York Produce) certeparti og utførte en reise med korn fra Houston til Agiers. Judge Kerr uttalte i sin redegjørelse på side 382:

"I think that it is intended to refer to some physical or geographical constraint upon the vessel's movements in relation to her service under the charter. On this basis there was no "detention" in the present case".

"Average accident" begrepet må forstås i betydningen en plutselig inntruffet/uventet begivenhet som forårsaker skade. Autoritet for dette finner vi i *The Mareva* på side 381:

"The owners...submit that "average accident" means a "general average accident". I reject this, as did the arbitrators. I think that it merely means an accident which causes damage".

Videre må den inntrufne skade være av en viss alvorsgrad, mengden av restlast om bord etc., slik at ubetydelig skade faller utenfor, jfr. *The Laconian Confidence*<sup>100</sup>, hvor Judge Rix uttalte på side 144:

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<sup>99</sup> *The Mareva* [1977] 1 Lloyd's Rep. 368

“It amounted, on my calculation, to no more than 0.16 per cent. of the cargo, and the arbitrators may well have viewed this tiny percentage as de minimis, hence their reference to an average accident as requiring "some magnitude"”.

Et spørsmål i den forbindelse er fra hvilket tidspunkt begivenheten skal opphøre, dvs. når skipets rådighet er tilbakeført til befrakteren. Dette er illustrert i saken *Vogemann v. Zanzibar Steamship Co. Ltd.*<sup>101</sup> Saken der gjaldt et skip som var sluttet på et New York Produce certeparti med tilsvarende ordlyd på off-hire klausulen som i saken om *Mareva over*. Skipet fikk havari under turen fra Hamburg til USA og måtte returnere for reparasjon. Spørsmålet var om skipet var å anse som ”detained” helt frem til hun var tilbake på ulykkesstedet. Flertallet v/Mr. Justice Phillimore uttalte på side 254:

“In my opinion the word "detention" does not apply here. "Detention" is not quite such a strong word as, for example, "delay". A vessel is detained when she is sent back to a port for repairs, and so long as she is kept there for the purpose of being repaired. But I do not think that a vessel can be said to be detained when the repairs having been finished, she has made a fresh start and is once more proceeding on her voyage.”

Dommen viser at skipet vil være on hire straks hun er ferdig reparert og klar til å fortsette sin tjeneste under befrakterens rådighet.

”Average accident” kan foreligge både i forhold til selve skipet og i forhold til skipets last. Når det gjelder skipets last (”cargo”), vil skade som bare kan henføres til lasten, ikke medføre tidstap for bortfrakters regning.<sup>102</sup> Skipets operasjon er da ikke satt ut av funksjon.

### **6.3.2 Norsk rett sammenholdt med engelsk rett**

Uttrykket “accident to her cargo” kan undertiden skape tolkningstvil. Temaet var fremme i en svensk voldgiftsdom om skipet *M/S Transic*<sup>103</sup>. Saken gjaldt et skip som var sluttet på et

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<sup>100</sup> *The Laconian Confidence* [1997] 1 Lloyd’s Rep. 139.

<sup>101</sup> [1901] 6 Com. Cas. 253 and 7 Com. Cas. 254.

<sup>102</sup> *Michelet* (1997) s. 334.

Baltimerteparti. Skipet møtte hardt vær underveis til Kina og måtte søke nødhavn i Aden for omstuing. Befrakter hevdet at skipet var blitt usjødyktig som følge av for stor mengde last og at skipet derved ble for stivt. Voldgiftsretten fant at skipet ikke var usjødyktig, og at den deviasjon som oppstod var tidsbefrakters risiko. Han måtte erstatte alle kostnader til nødhavnsanløpet og omstuing. Begrunnelsen som ble gitt var at dette vedrørte lasten og derfor var et forhold som falt på befrakters side (dvs. hans risiko), jfr. også reguleringen i sjøl. § 381.

Dommen over viser at dersom det ikke er blitt noen skade på skipet, men kun på lasten, vil utgifter til nødhavn i utgangspunktet falle på tidsbefrakteren. Denne løsning synes også å stemme overens med som følger av en objektiv ordlydsforståelse, jfr. drøftelse over. Skipets operasjonalitet er ikke satt ut av spill. Men har begivenheten som forårsaket lasteskaden også forårsaket skade på skipet, for eksempel et maskinhavari ("breakdown of machinery"), vil dette antagelig falle inn under off-hire bestemmelsen i for eksempel Baltimerteparti 11 (A), idet det må sies å foreligge "other accident either hindering or preventing the working of the vessel"<sup>104</sup>.

Uttrykket "accident" var også fremme i ND 1944.52 (Rigoletto), Bergen byrett. Skipet var sluttet på et Baltimerteparti og gjaldt et tilfelle av grunnstøtning. Spørsmålet var om skipet skulle anses off-hire mens det stod på grunn, selv om det viste seg at skipet som sådan ikke var påført skade. Retten fant at hendelsen var omfattet av formuleringen "other accident" og uttaler på side 62:

"Selv om fartøyet ikke skulle ha fått sådanne skader ved grunnstøtingen, at skadene hindret det i å fortsette reisen, så var det dog, så lenge det stod på grunn, uskikket til å fylle et skips normale funksjoner. Det kan da ikke sies å være til disposisjon for befrakteren på den måten, som ved fraktavtalen forutsatt. Der foreligger her et tilfelle som etter rettens oppfatning dekkes av de uttrykk, som brukes i "Baltimerteparti"-certepartiets klausul 11 A."

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<sup>103</sup> ND 1969.353 SV.

<sup>104</sup> Michelet (1997) s. 334. I et slikt tilfelle vil reglene om felleshavari i sjøloven kap. 17 komme til anvendelse.

En slik ordlydsforståelse finner vi også i engelsk rett, jfr. saken *Mareva*, hvor dommer Kerr uttaler på side 382:

“I think that it is intended to refer to some physical or geographical constraint upon the vessel's movements in relation to her service under the charter.”

Poenget er at uforutsette hindringer som berører skipet som sådan, anses å innebære svikt i bortfrakterens oppfyllelse i form av skipets rådighetsstillelse. I motsatt fall, er ikke skipet off-hire. På dette punkt er det ingen forskjell mellom norsk og engelsk rett.

Spørsmålet om ”accident to cargo” var fremme i saken om *The Jevington Court*<sup>105</sup>. Skipet var sluttet på et Baltimore certeparti og var på reise fra Argentina til UK/Kontinentet. I elven River Plate grunnstøtte skipet som følge av uaktsomhet fra losen og defekter ved fyrlysene. Etter at skipet var flott måtte lasten omlastes ved ankomst Buenos Aires på grunn av fuktskader. Her kom domstolen til at dette ikke representerte ”other accident” i klausul 11(A) sin forstand. Begrunnelsen var at skipet var fullt ut operativt etter at det var trukket av grunnen og kunne utføre sine oppgaver.

Når det gjelder Baltimore certepartiet er det grunn til å merke seg ordene i 11(A) som kommer senere; nemlig at uhellet også skal ”prevent the full working of the vessel”. Dette ble tillagt betydning i saken *Mareva*,<sup>106</sup> som var sluttet på et Produce certeparti. Her var kornlasten påført fuktskader under reisen på grunn av vann som trengte inn lukedekslene. Bortfrakteren hevdet at det forelå en ”accident to cargo”, som i sin tur førte til ”detention”. Her må legges til at etter Produce certepartiet er ”accident to cargo” definert som en off-hire begivenhet, mens det etter Baltimore certepartiet er et unntak (jfr. kl. 11(B)) som

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<sup>105</sup> *Jevington Court* [1966] 1 Lloyd's Rep. 683

<sup>106</sup> Omtalt under 6.3.1 over.

befrakteren må bære risikoen for.<sup>107</sup> Mr. Justice Kerr fant at Mareva ikke var off-hire og begrunnet sitt standpunkt med:<sup>108</sup>

“But if, for instance, the cargo is damaged as the result of an accident, but the vessel's ability to work fully is not thereby prevented or impaired, because the vessel in herself remains fully efficient in all respects, then I do not think that the charterers bring themselves within the clause.”

I en tilsvarende sak om skipet Mastro Giorgis<sup>109</sup> ble resultatet det motsatte. Også her var skipet sluttet på et Produce 1946 certeparti. Det oppstod skader på kornlasten, skipet ble arrestert og dette medførte forsinkelser ved lossingen. Mr. Justice Lloyd kom til at skipet her var off-hire og begrunnet dette med tilføyelsen av ordet ”whatsoever” etter ”any other cause”, hvilket måtte bety at ejusdem generis-regelen<sup>110</sup> ble satt ut av spill, jfr. hans uttalelse på side 68-69:

“Where, as here, the word "whatsoever" is added, *any* cause may suffice to put the vessel off-hire, whether physical or legal; the question in each is whether it prevents the full working of the vessel for the service immediately required.”

Grunnen til at resultatene ble forskjellige i dommene, kan henføres til ulikhet i ordlyden på off-hire klausulene. I tilfellet Mareva inneholdt klausulen ”...or by any other cause...”, mens det i saken Mastro Giorgis var tilføyd ordet ”whatsoever”. Dermed ble off-hire årsakene som bortfrakteren kunne bli ansvarlig for langt videre i sistnevnte sak.

Av dommene over kan man slutte at det etter engelsk rett både må foreligge “accident to cargo” og at dette må medføre en ”preventing of the full working of the vessel”. Dersom det bare er lasten som blir skadet, mens skipet forblir uskadd, er skipet on hire.

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<sup>107</sup> Jfr. kapittel 4.2.1 og 4.2.3

<sup>108</sup> Dommen side 382.

<sup>109</sup> Mastro Giorgis [1983] 2 Lloyd's Rep. 66

<sup>110</sup> Jfr. kapittel 2.2.2.

## 6.4 "Time lost thereby"

Jeg vil nå gå over til å se nærmere på selve tidstapet, dvs. grunnlaget for tidstapsberegningen. Selve utregningen av det konkrete pengetapet faller utenfor oppgaven her.

Det skilles mellom netto og bruttotidstap-klausuler. Netto-klausuler innebærer at man ser på hvilket netto tidstap befrakteren er påført gjennom rådighetsavbruddet. Ved bruttoklausuler konstateres kun når tidstapet begynte og når det sluttet.<sup>111</sup> Innenfor dette tidsrommet er skipet off-hire, og da er det uten betydning hvilken nytte befrakteren i denne perioden måtte ha av skipet. Hvorvidt certepartiet har en netto eller bruttotidstapsklausul vil derfor etter omstendighetene ha betydning for risikofordelingen mellom partene.

### 6.4.1 En naturlig forståelse av ordlyden

Ordlyden i Baltime klausul lyder:

“...any time lost thereby during the period in which she is unable to perform the service immediately required”.

Off-hire etter Baltime blir aktuelt når en av hindringene i klausulen har vart i mer enn 24 timer. Dette er å forstå som en terskelverdi, og betyr ikke at tidstapet må ha vart lenger.<sup>112</sup> Har en hindring vart i mer enn 24 timer, regnes tidstapet for hele tidsperioden. Det er også grunn til å merke seg at skipet er on hire etter Baltime straks hun er i stand til å gjenoppta "the service immediately required". Dette betyr at for eksempel i forbindelse med et verkstedopphold, vil hyren begynne å dreie straks skipet deretter stilles til befrakters disposisjon. Etter ordlyden vil dette også bety at ved deviasjon til verkstedet vil befrakteren etter Baltime måtte betale dobbelt for den delen av reisen. På dette punkt avviker dette

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<sup>111</sup> Michelet (1997) s. 347.

<sup>112</sup> *ibid.* s. 345



certepartiet fra de øvrige nedenfor, som ikke har tilsvarende formuleringen i sine off-hire bestemmelser.

Ordlyden om tidstapet i NYPE 93 certepartiet lyder:

”...cease for the time thereby lost. Should the Vessel deviate or put back during a voyage, contrary to the orders or directions of the Charterers, for any reason other than accident to the cargo or where permitted in lines 257 to 258 hereunder, the hire to be suspended from the time of her deviating or putting back until she is again in the same or equidistant position from the destination and the voyage resumed therefrom”.

Av ordlyden følger at skipet er off-hire inntil det er tilbake i en tilsvarende posisjon som da off-hire begivenheten oppstod. Derved unngår befrakteren å måtte betale for deviasjon som under Baltime over. For øvrig er både Baltime og NYPE 93 såkalte netto-tidstapklausuler, jfr. avsnittet over. I motsetning til Baltime 1939 sier klausulen i NYPE 93 ikke noe om opphør av off-hire perioden straks skipet er i stand til å gjenoppta ”the service immediately required”. Det kan derfor oppstå tvil omkring tolkningen av NYPE 93 på dette punkt. Engelsk rettspraksis viser at off-hire perioden i NYPE tolkes slik at den avbrytes straks skipet er klar og tilgjengelig for sin neste oppgave.<sup>113</sup>

Når det gjelder Shelltime 4 har tidstapet fått en noe annerledes ordlyd:

”...shall be off-hire from the commencement of such loss of time until she is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which such loss of time commenced”.

Så langt dreier det seg om en bruttoklausul. Men i Shelltime 4 fikk certepartiet et tillegg:

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<sup>113</sup> Autoritet for dette er gitt i dommene Marika M [1981] 2 Lloyd's Rep. 622 og Pythia [1982] 2 Lloyd's Rep. 160.

“..provided, however, that any service given or distance made good by the vessel whilst off-hire shall be taken into account when assessing the amount to be deducted from hire”,

hvilket gjør dette til en nettoklausul.

Tilsvarende inneholder også STB time en netto tidstapklausul:

..”all time lost until the vessel is again in an efficient state to resume her service and has regained a point of progress equivalent to that when the hire ceased hereunder...”

I likhet med NYPE 93 inneholder også STB time og Shelltime 4 tilleggskrav om at skipet for å være on hire må tilbake i en posisjon som er tilsvarende i forhold til da off-hire begivenheten inntrådte.

Sett med bortfrakterens øyne, fremstår Baltime certepartiet som det mest gunstige for ham, da bortfrakter etter omstendighetene får betalt hyre straks skipet er stilt til befrakterens disposisjon etter for eksempel et verkstedopphold. Han får derved betalt for halvparten av deviasjonen (fra deviasjonshavn til opprinnelig off-hire posisjon).

Tidstap eller ”loss of time” har befraktningsmessig to betydninger. For det første kan det henvise til den tid som skipet var forhindret fra å være operativ, dvs perioden skipet var uvirksom. Dernest kan begrepet bety forsinkelse i selve befraktningsforholdet. Begge disse dimensjoner av begrepet må foreligge for å kunne kreve off-hire.<sup>114</sup> Befrakteren kan da bare trekke fra tid hvor skipet er forhindret fra å operere effektivt og det har vært en forsinkelse i befraktningsforholdet.

Denne forståelsen samsvarer også godt med ordlyden i Baltime certepartiet:

“...during the period in which she is unable to perform the service immediately required”.

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<sup>114</sup> Time Charters (2008) kapittel 25.53 s. 452

I de øvrige certepartiene er ikke dette like klart formulert. Det er likevel grunn til å anta at certepartiene vil fortolkes likt på dette punkt.

#### **6.4.2 Norsk rett sammenholdt med engelsk rett**

I norsk rett var spørsmålet om anvendelse av brutto- eller nettotidstapsprinsippet fremme i dommen Herman Wedel Jarlsberg.<sup>115</sup> Skipet var sluttet på et 12 måneders Baltime tidscerteparti. Skipet grunnstøtte og måtte til København for reparasjon. Spørsmålet gjaldt hvem som skulle bære risikoen for deviasjonen til København, som skibet uansett skulle passere. Off-hire bestemmelsen i certepartiet hadde følgende ordlyd:

« That in the event of loss of time from - - - groundings or strandings or damage preventing the working of the vessel for more than 24 running hours, the payment of hire shall cease from the commencements of such breakdown untill she be again in an efficient state to resume her service. »

Til spørsmålet uttalte sjørretten:

”Da det er tidstapet, rederiet efter denne bestemmelse er ansvarlig for, synes bestemmelsen naturlig at maatte forstaaes saaledes, at hyren alene bortfalder for den tid, som virkelig er spildt for skibet. Befragteren vilde ellers faa en likefrem gevinst.”

Dermed ble det faktiske tidstap som befrakteren ble påført lagt til grunn. Saken ble anket til Høyesterett som sa seg enig med sjørretten. Derved stadfestet dommen det nettotapsprinsipp som var etablert gjennom sjøloven av 1894, og som fra 1938 ble kodifisert gjennom § 144 annet ledd<sup>116</sup> (nå § 392).

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<sup>115</sup> Rt. 1915 s. 881 (=ND 1915.168)

<sup>116</sup> Falkanger (1997) s. 298

Sammenlignet med engelsk rett og dommen om skipet Westfalia,<sup>117</sup> finner vi her et tolkningsresultat som går i motsatt retning. Ordlyden i off-hire klausulen var her mye lik den i saken om Herman Wedel Jarlsberg:

“...in the event of loss of time from deficiency of men [etc.]...the payment of hire should cease until she should be again in an efficient state to resume her service.”

På side 54 i dommen forklarer Lord Halsbury sin forståelse av ordlyden:

“...the hirer of the ship is guarding against by this contract with the owner of the ship is, that he is not to pay during such period of time as he shall lose (that is, lose time) in the use of the ship by reason of any of the contingencies which this particular clause contemplates.”

Retten konkluderte at skipet under slepet fra Las Palmas til Harburg (lossehavn) var off-hire, og bruttotidstapsprinsippet ble lagt til grunn. Derimot ble hun ansett on hire under lossingen, da skipet i den perioden var i effektiv stand til å utføre oppgaven. Her ble altså bortfrakteren ikke innrømmet frakt for reisen (slepet) til lossehavnen, mens det motsatte ble resultatet i Herman Wedel Jarlsberg dommen over.

De to sakene illustrerer etter mitt skjønn klare forskjeller mellom norsk og engelsk tolkningstradisjon og metode, hvor den engelske domstolen i Westfalia la avgjørende vekt på kontraktsformularet og en streng fortolkning av ordlyden i formularet. I Herman Wedel Jarlsberg, derimot, la domstolen til grunn en bred helhetsvurdering i fortolkningen av off-hire klausulen, og at det er det virkelig lidte tap som skal legges til grunn.<sup>118</sup>

En interessant sak hvor forholdet mellom norsk, engelsk rett og formularkonsipistenes antatte mening kom på spissen, finner vi i saken Arica.<sup>119</sup> Saken er parallell til både Westfalia og Herman Wedel Jarlsberg over. Et skip som var sluttet på et Texacotime certeparti og fikk under en reise fra USA til Japan maskinhavari i Stillehavet. Skipet måtte

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<sup>117</sup> Hogarth v. Miller [1891] A.C. 48 HL. Dommen er nærmere omtalt i kap. 6.1.2.

<sup>118</sup> Jfr. dommen s. 882

<sup>119</sup> ND 1983.309

slepes over Stillehavet, men lasten ble losset som forutsatt i Japan. Spørsmålet i saken var om befrakteren skulle betale tidsfrakt for sleping. Med andre ord skulle det anvendes brutto- eller nettotidstapsbetraktning. Voldgiftsretten kom til at det måtte innfortolkes et bruttotidstapsprinsipp i tråd med certepartiets ordlyd og formularkonsipistenes antatte mening. Dette resultatet står i sterk motsetning til hva Høyesterett gjorde i saken om Herman Wedel Jarlsberg over (Rt. 1915 s. 881), og i strid med det nettotidstapsprinsipp som fantes i tidligere sjølov § 144 annet ledd, og som er gjentatt i sjøloven av 1994 § 392. Fra begrunnelsen siteres:

”Hvor certepartier og lignende slutes på grunnlag av utførlige standardformularer (standardvilkår), vil kontrahentene ofte ha et nokså mangelfullt kjennskap til formularets enkelte bestemmelser. De har gjerne en mening om formularets generelle kvalitet og karakter, men har ikke satt seg inn i de mange og ofte kompliserte klausuler, og langt mindre hva disse klausuler vil innebære i de forskjellige situasjoner som kan oppstå i kontraktstiden. En fortolkning med utgangspunkt i hva kontrahentene har ment eller villet med vedkommende klausul, er i så fall ikke mulig.

Det tolkningsmiddel man istedenfor må gripe til, er formularkonsipistenes aktuelle eller formodede mening, formularets historie e.l.

...Etter flertallets mening må spørsmålet [om off-hire klausulen skal suppleres med sjøl. § 144 annet ledd] besvares benektende. Godtar man at et standardformular etter norsk rett må tolkes i overensstemmelse med konsipistenes klare forutsetninger, gir en fortolkning av off hire klausulen løsningen, uten at det er nødvendig å trekke inn bakgrunnsretten, det være seg engelsk eller norsk rett...”

Retten viste i sin begrunnelse også til saken Westfalia, hvor certepartiet hadde en identisk off-hire klausul. Konsipistene måtte derfor forstås slik at de ønsket å følge House of Lords’ løsning på dette punkt, jfr. dommen side 318. Mindretallet uttrykte at når partene hadde valgt norsk voldgift og norsk rett, burde norsk rettsoppfatning være avgjørende.<sup>120</sup>

Dommen er omstridt og meget diskutert i juridisk teori, og må anses som et ekstremt tilfelle i følge Falkanger.<sup>121</sup>

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<sup>120</sup> Dommen s. 325 v/Peter Michelet

<sup>121</sup> Falkanger (1997) s. 298 flg. Dommen er også kritisert av Erling Selvig i TfR 1986 s. 1 flg. Han uttaler på s. 13: ”Et norsk ”mellomstandpunkt” hvorefter klausulens angivelse av tidsrommet for bortfall av tidsfrakt er

En parallell sak finner vi i dommen om Hindanger,<sup>122</sup> hvor også spørsmålet om anvendelse av norsk versus engelsk rett var oppe. Skipet var sluttet på et Baltimerteparti. Under reisen fra New York til persiske Gulf fikk skipet brannskader og gjorde vendereis til New York for reparasjon. Voldgiftsretten kom til at skipet burde ha utført reparasjonene i Palermo (Italia), som var langt nærmere havaristedet. Her sa retten at bortfrakteren hadde en plikt til å økonomisere med befrakterens tid,<sup>123</sup> og begrunnet dette bl.a. med at bortfrakteren hadde en generell plikt til å utføre så vel selve reisen som stopp p.g.a. reparasjoner og lignende med "the utmost dispatch". Dermed ble befrakteren innrømmet erstatning for forskjell i deviasjon mellom New York og Palermo.

I dommen på side 80 flg. diskuterer voldgiftsdommer Sjur Brækhus spørsmålet om anvendelse av norsk versus engelsk rett. Til tross for at begge partene hadde sterk tilknytning til Norge og at voldgiftsklausulen var blitt endret fra London til Oslo, fant han at dette ikke hadde noen betydning for lovvalgsspørsmålet; engelsk rett måtte gjelde.<sup>124</sup> Sett på denne bakgrunn kan det hevdes at resultatet er noe overraskende ved at det trekkes inn rimelighetsvurderinger i retning av en form for "lojalitetsplikt", jfr. at bortfrakter hadde plikt til å økonomisere med befrakterens tid. Det kan derfor anføres at kontrakten derved ble gjenstand for utfylling gjennom bakgrunnsretten; noe som domstolene er svært tilbakeholdne med i engelsk rett.<sup>125</sup> Her ser vi derfor etter mitt skjønn en viss sammenblanding av norsk og engelsk metode; noe som er uheldig og lett kan skape usikkerhet om rettsstilstanden. Samtidig vil jeg hevde at det kan være tvilsomt om resultatet ville blitt det samme med engelske dommere.

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ubetinget avgjørende (Arica-saken), samtidig som dens oppregning av offhire-begivenheter ikke er det, og tillater supplerings etter sjøl. § 144 (Hakefjord-saken, ND 1952.442 VG), fremtrer i dette perspektiv som en lite heldig løsning."

<sup>122</sup> ND 1962.68

<sup>123</sup> *ibid.* s. 87

<sup>124</sup> *ibid.* s. 81

<sup>125</sup> Jfr. for eksempel Poole s. 252 flg.

I dommen på side 82 uttaler voldgiftsretten at når Baltime klausul 11 (A) skal tolkes etter engelsk rett, synes det klart at tidsfrakten begynner å løpe straks skipet er ferdigreparert og klar til avgang. Samtidig sies det at det ikke kan utelukkes at man ville komme til et annet resultat, dersom norske fortolkningsprinsipper var blitt lagt til grunn, tatt i betraktning at reparasjonshavnen var langt ugunstigere for tidsbefrakteren. Dette understreker etter min mening ytterligere forskjellen mellom norsk og engelske metode, hvor den norske metoden legger til grunn en bred og helhetlig vurdering når kontrakter skal tolkes; herunder også rimelighetsbetraktninger.

Engelske domstoler har vist en tendens til å tolke off-hire klausuler etter bruttotidstapsprinsippet dersom mulig.<sup>126</sup> Prinsippet ble bl.a. slått fast i dommen om Westfalia;<sup>127</sup> jfr. dommen side 54. Prinsippet er videreført bl.a. i dommen Bridgestone Maru No. 3<sup>128</sup>, hvor dommer Hirst uttaler på side 84:

“In my judgment, this is essentially a period and not a loss of time clause. The Courts have always leaned strongly in favour of construing these clauses in the former sense, to avoid the complexities of calculating minutiae of lost time under the latter approach (see e.g. *The H.R. Macmillan*, [1974] 1 Lloyd's Rep. 311)”.

Dette står i kontrast til utviklingen i kontraktspraksis, som synes å gå i motsatt retning. Dette vises bl.a. i Shelltime 4, som erstattet Shelltime 3, og som nå inneholder en nettotidstapsklausul<sup>129</sup>. Tilsvarende utvikling fant sted også i Baltime certepartiet ved revisjonen i 1939 samt i NYPE 46 gjennom revisjonen i NYPE 93.

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<sup>126</sup> Time Charters (2008) kapittel 25.62 s. 454

<sup>127</sup> Hogarth (Hugh) and Owners of Westfalia v Miller (Alexander) Brother & Co., (H.L.) [1891], jfr. kap. 6.1.2

<sup>128</sup> Bridgestone Maru No. 3 – Navigas International Ltd v. Trans-Offshore Inc. [1985] 2 Lloyd's Rep. 62 QB, jfr. kap. 6.1.2.

<sup>129</sup> Time Charters (2008) kapittel 25.62 s. 454.

Bruttotidstapsprinsippet var også vurderingstema i saken *Tynedale v. Anglo-Soviet*.<sup>130</sup> Skipet var sluttet på et *Baltimé certeparti*, som før revisjonen i 1939 var en perioderegel. Forholdet var at to av skipets vinsjer var gått i stykker og derfor ikke kunne brukes under lossingen. Lossingen tok 6 dager lengre enn forutsatt. Retten tolket *off-hire* bestemmelsen slik at befrakterne fikk medhold i at det ikke skulle betales tidsfrakt for hele perioden og ikke bare merforbruket av tid. Dommen gav støtet til endring av ordlyden i *certepariet*, som nå er en nettotidstapsregel:

“...any time *lost thereby* during the period in which she is unable to perform *the service immediately required*” [min utheving].

Dommen viser at etter engelsk rett er utgangspunktet bruttotidstapsprinsippet, og at man derfor søker å finne når tidstapet begynte og når det sluttet. Innenfor denne rammen er skipet *off-hire*, uansett hvilken nytte befrakteren har hatt av skipet i denne perioden. På dette punkt ser vi en klar forskjell i forhold til sjølovens system, hvor nettoprinsippet gjelder, jfr. avgjørelsen i *Herman Wedel Jarlsberg* i kapittel 6.4.2 over og kodifiseringen av rettstilstanden i tidligere sjøl. § 144 annet ledd.

Dersom skipet må foreta omlasting på grunn av verkstedoppholdet, er det antatt at *off-hire* perioden opphører fra det tidspunkt skipet er klar til å ta den lossede last om bord. Autoritet for dette finner vi i dommen *Smailes v. Evans*<sup>131</sup>. Skipet, *MS Carisbrok*, gikk på grunn utenfor Newfoundland, og måtte losse deler av lasten på havaristedet og i en havn i nærheten. Reparasjonen var ferdig 18. oktober, men først 30. oktober var gjeninnlastingen avsluttet. Her uttaler bl.a. dommer *Bailhache* på side 59:

”In this case the vessel was, as a vessel, undoubtedly in an efficient state at 11 A.M. on October 18, that is to say, she had had her temporary repairs completed, and was ready to sail the seas as a seaworthy ship. But was she in an efficient state " to resume her service " ? Mr. Leek contends that until the cargo was reloaded she was not. I cannot agree. I think she did in fact resume her service the moment she was efficient to do so. It is quite true that there was time lost by the accident until

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<sup>130</sup> *Tynedale v. Anglo-Soviet* (1936) 41 Com. Cas. 206

<sup>131</sup> *Smailes v. Evans* [1917] 2 K.B. 54.



8.30 A.M. on October 30, and if the clause had said that hire should not be payable during " all time lost in consequence of an accident" Mr. Leek's contention would, I think, have been right. But that is not the language used. The clause which I am construing does not give the charterers a complete indemnity for time lost under the circumstances that occurred in this case."

Bortfrakteren påstand om at skipet var on hire fra 18. oktober ble altså tatt til følge.

Sammenlignet med norsk rett finner vi et avvik på dette punkt. Etter norsk rett er man mer tilbøyelig til å anse skipet off-hire helt frem til lasten er tatt om bord igjen. Bakgrunnen for dette synspunkt er at man anser lossingen og dermed gjeninnlastingen som en del av reparasjonen.<sup>132</sup>

Spørsmålet om opphør av off-hire perioden kom også på spissen i sakem Marika M<sup>133</sup>. Saken gjaldt et skip som var sluttet på et NYPE 46 certeparti, og gikk på grunn. Som følge av forsinkelsen mistet hun sin opprinnelige kaiplass, og måtte vente ytterligere 10 dager på ny kaiplass. Dommer Parker fant at skipet kun var off-hire frem til det var flott, og begrunnet dette med at skipets "full working" da ikke lenger var forhindret. Befrakteren fikk således risikoen for tidstapet etter at skipet var flott. Her ble altså off-hire perioden avsluttet i det øyeblikket skipet var flott. På bakgrunn av resultatet i Hindanger (jfr. kapittel 6.4.2) og den helhetsvurdering som norske domstoler legger til grunn, kan det under henvisning til generelle kontraktsrettslige- og alminnelige rettsprinsipper hevdes at norske domstoler trolig ville ha kommet til et annet resultat. Etter omstendigheten kan således et slikt "avledet" tidstap som i saken Marika M henføres til "bortfrakterens forhold", jfr. sjøl. § 392.

Som tidligere påpekt i avsnitt 6.4.1 kan fravær av ordlyden "unable to perform the service immediately required" i NYPE 93 gi grunnlag for tolkningstvil i forhold til Baltimore 1939. Men det synes nå klart at rettstilstanden etter engelsk rett er avklart gjennom dommene Marika M og Pythia<sup>134</sup> slik at de to certepartiene på dette punkt skal forstås på samme

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<sup>132</sup> Michelet (1997) s. 349

<sup>133</sup> Marika M [1981] 2 Lloyd's Rep. 622

<sup>134</sup> Pythia [1982] 2 Lloyd's Rep. 160.

måte; nemlig at off-hire perioden avbrytes straks skipet er klar og tilgjengelig for sin neste oppgave. Autoritet for dette er gitt av dommer Goff i saken Pythia på side 168:

“Into which category does cl. 15 of the New York Produce Exchange form fall? In my judgment, both as a matter of construction of the clause and as a matter of authority, it falls into the same category as the off-hire clause in a Baltim charter. The clause contemplates the happening of a certain event which has the effect of preventing the full working of the vessel in the performance of the service immediately required of her. If such an event occurs, "the payment of hire shall cease for the time thereby lost". The clause therefore contemplates a cesser of the payment of hire during the period when "the full working of the vessel" is so prevented, but only to the extent that time is thereby lost.”

Sammenlignet med norsk rett, er det liten grunn til å anta at norske domstoler vil forholde seg annerledes på dette punkt, jfr. bl.a. sakene Herman Wedel Jarlsberg og Arica, hvor begge skipene var ansett on hire under utførelsen av losseoperasjonen.

## 6.5 Sammenfatning

Selv om undersøkelsen på enkelte punkter viser klare forskjeller mellom norske og engelske tolkningsprinsipper<sup>135</sup>, gir ikke dette nødvendigvis forskjellige tolkningsresultater. Dette gjelder først og fremst saker hvor det seg om tolkningen av bestemte ord og uttrykk med særlig betydning, og som har en festnet oppfatning i markedet, jfr. dommene ND 1949 s. 540 og ND 1959 s. 242 (Hilde Torm). Her ble begreper i certepartiet basert på en ordlydsforståelse, noe som var i overensstemmelse med engelsk rett.

En slik ordlydsforståelse og samsvar mellom norsk og engelsk rett finner vi også i dommene om Rigoletto<sup>136</sup> og Mareva<sup>137</sup>.

Annerledes blir det etter norsk tolkningstradisjon dersom det dreier seg om kontraktsbruddsanksjoner. Med kontraktsbruddsanksjoner forstår jeg sanksjoner som følge

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<sup>135</sup> Jfr. definisjon i kapittel 1.1

<sup>136</sup> ND 1944.52 Rigoletto. Se omtale under kapittel 6.3.2

<sup>137</sup> The Mareva [1977] 1 Lloyd's Rep. 368. Se omtale under kapittel 6.3.1

av at certepartiet er misligholdt av en part. En slik sanksjon kan for eksempel være at reder trekker skipet tilbake, hvilket innebærer at certepartiet heves. I slike tilfeller synes norsk (og nordisk) bakgrunnsrett å ha sterkere gjennomslagskraft, jfr. bl.a. dommene ND 1952 s. 442 (Hakefjord) og ND 1950 s. 398 (Karmøy). Etter norsk tolkningstradisjon er det et klart mål å tilstrebe balanse og rimelighet i kontraktsforholdet.<sup>138</sup> I de sistnevnte sakene la domstolene til grunn en bred helhetsvurdering, og henviste til generelle kontraktsrettslige og alminnelige rettsprinsipper i sine begrunnelser. En slik regel om supplerings med bakgrunnsretten finner vi ikke i engelsk rett, og engelske domstoler er generelt svært tilbakeholdne med å innfortolke noe i kontrakten eller ”skrive” kontrakten for partene; de holder seg strengt til ordlyden.

Den danske dommen om skipet Tora<sup>139</sup> viser samme tolkningstilnærming og understreker den brede helhetsvurderingen som nordiske domstoler legger til grunn.

Endelig vil jeg trekke frem sakene Hakefjord og Istros v Dahlström<sup>140</sup> som eksempler på at norsk og engelsk metode kan føre til ulike tolkningsresultat, selv om begge rett tar utgangspunkt i kontraktens ordlyd. I sistnevnte sak la den engelske domstolen seg på en streng ordlydsfortolkning, mens norsk rett supplerte med bakgrunnsretten og kom til motsatt resultat. Dette viser at engelsk rett gjennomgående foretar en langt strengere ordlydsfortolkning enn norsk rett. Dette fremgår også av dommen ND 1974.186 NV Kingsnorth, hvor voldgiftsretten på side 195/196 uttalte at:

”[d]et er voldgiftsrettens oppfatning at kontrakter som er underlagt de nordiske sjølover ikke tolkes så strengt etter ordene som for eksempel etter engelsk rett.”

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<sup>138</sup> Se også ND 1974.186 NV Kingsnorth hvor en samstemmig voldgiftsrett på side 196 uttaler:

”Voldgiftsretten finner også støtte for sitt resultat i Per Gram: ”Fraktavtaler” (3dje utgave) side 182 hvor det heter: Forsiktighet og rimelighet må tilrådes ved bruken av et så skarpt våpen (som tilbaketrekning). Rederen bør ikke friste til mistanke om at hensikten bare er å bli kvitt et tyngende certeparti.”

<sup>139</sup> ND 1993.105 SØHa. Se omtale under kapittel 6.2.2.

<sup>140</sup> Se nærmere omtale i kapittel 6.2.3

## 7 HVILKE HENSYN GJØR SEG GJELDENE OG HVILKEN LØSNING TILSIER DISSE?

Den interlegale<sup>141</sup> rett, som er en del av ethvert lands rettssystem, kan som påvist ovenfor få avgjørende betydning for en tvists rettslige utfall. I den sammenheng kan det blant kontraktspartene utvikle seg en iver etter å velge et lovvalg/rettssystem hvor en potensiell tvist antas å få en gunstigst mulig utfall for en selv. Dette betegnes som såkalt ”forum shopping”<sup>142</sup>. Hensynet til **harmonisering og internasjonalisering** av kontraktsretten kommer sterkt inn her. Dette hensynet kan også beskrives som **rettsenhet**, og tar sikte på at likeartede tvister skal få samme utfall internasjonalt. Dette er nettopp hensikten med utvikling av internasjonale konvensjoner samt de europeiske initiativene som ligger bak PECL og UNIDROIT prinsippene. En slik denasjonalisering av kontraktsretten tilsier da fortrenghet av de enkelte lands bakgrunnsrett.<sup>143</sup> Dette hensynet var bl.a. klart fremme i dommen *Mimona*<sup>144</sup>, hvor det innledningsvis ble uttalt:

”Bedömandet av förevarande tvist är främst beroende av huru bestämmelserna uti ifrågavarande standardcerteparti rätteligen skola tolkas. Därvid bör med hensyn til certepartiets engelska ursprung – oavsett om å parternas mellanvarande i och för sig skall tillämpas svensk rätt – beaktas engelsk rättsuppfattning på området”. (ND 1954 s. 761)

Et annet hensyn som taler for en objektiv ordlydsbasert fortolkning, er hensynet til utøvelsen av **dommerskjønnet** og objektivisering av tolkningsprosessen<sup>145</sup>. Mindre vil da bli overlatt til den enkelte dommers skjønn. Dette vil bidra til større ensartethet i fortolkningen og økt forutberegnelighet for partene. Rent praktisk betyr dette at partene i langt større grad vil være i stand til å forutse sin rettsstilling.

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<sup>141</sup> Benevnes også internasjonal privatrett og er betegnelsen på de reglene som avgjør hvilke lands rett som skal komme til anvendelse der en tvist har tilknytning til flere stater.

<sup>142</sup> Falkanger/Bull (2006) s. 17

<sup>143</sup> Möllmann (2007) s. 229-230.

<sup>144</sup> NJA 1954 s. 573 (=ND 1954.749).

<sup>145</sup> Falkanger (1997) s. 300

En utvidende bruk av standardformularets forarbeider har imidlertid også et mothensyn. Forarbeidene kan ofte være begrensede eller lite tilgjengelig for partene. Derved vil ikke alltid partene ha kjennskap eller kunnskap om hva formularforfatterne egentlig har ment. Det kan derfor anføres at utstrakt bruk av forarbeider også vil kunne gi redusert forutberegnelighet. På den annen side dreier det seg om dokumenter som anvendes av et stort antall markedsaktører i bransjen, og er således allment kjent. Et annet motargument er at de avtalte standardvilkår representerer såkalte "agreed documents", fremforhandlet mellom partene eller deres organisasjoner/representanter. For den "svake" part i forholdet (for eksempel bortbefrakter i forhold til de store oljeselskapene) gir dette en rimelig sikkerhet for at den balansen som ligger i de avtalte standardvilkår opprettholdes i det konkrete kontraktsforhold. Videre er det også innen juridisk litteratur<sup>146</sup> støtte for å anse standardkontrakter og deres forarbeider som utslag av privat lovgivning ("uekte" lovgivning), og derved en fortolkningsprosess lik den vi finner ved tolkning av lover. Dette innebærer at det legges betydelig vekt på forarbeidene. Problemet ved en slik tilnærming er at det for de fleste certepartier sjelden finnes relevante og tilgjengelige forarbeider. I mangel av slike forarbeider, blir realiteten derfor at man ofte ender opp med vanlig objektiv ordlydsforståelse av kontrakten.

Et annet hensyn, som er av mer rettspolitisk art, er hensynet til en rimelighet. Gjennom de norske (og nordiske) dispositive rettsreglene vi finner i sjøloven, vil norsk tolkningstradisjon gi en mer rimelig og helhetlig **normalløsning** sammenlignet med en engelsk tolkning. Dette hensynet taler da for en løsning basert på sjølovens system.

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<sup>146</sup> Bull (1988) s. 99 flg.

## 8 HVILKE TOLKINGSPRINSIPPER ELER METODER KAN AVLEDES?

Innledningsvis kan en sammenligning til våre naboer i Sverige her være på sin plass i lys det felles nordiske lovsamarbeidet. Grönfors<sup>147</sup> taler om en etterfølgende justering av tolkningsresultatet med hensyn til det internasjonale element. Han sikter her til at fraktavtaler har en internasjonal forankring som ofte er basert på engelsk rettstradisjon. Følgelig hevder Grönfors at den løsning man kommer til etter en svensk tolkningsmetode, må justeres med engelsk bakgrunnsrett. Han begrunner dette med hensynet til internasjonal rettsenhet og at sjørettslige tvister bør løses likt uavhengig av nasjonale særregler eller prinsipper.

Denne metodikken ble også klart uttalt av Sveriges høyesterett (SH) i saken *Mimona* NJA 1954 s. 573 (=ND 1954 s. 749), hvor det innledningsvis ble uttalt:

”Bedömandet av förevarande tvist är främst beroende av huru bestämmelserna uti ifrågavarande standardcerteparti rätteligen skola tolkas. Därvid bör med hensyn til certepartiets engelska ursprung – oavsett om å partnernas mellanvarande i och för sig skall tillämpas svensk rätt – beaktas engelsk rättsuppfattning på området”. (ND 1954 s. 761)

En slik ”tolkningsmetodikk” finner vi også utslag i norsk rettspraksis, jfr. *Aricadommen*<sup>148</sup>. Også her ble ordlyden og den engelske oppfatningen av certepartiklausulen lagt til grunn. Spørsmålet om utfylling kom derfor aldri på spissen. Tilsvarende også i *dommen* ND 1949 s. 540 som gjaldt tolkningen av begrepet ”ton” i et Genconcerteparti. Retten la her til grunn det engelske tonn-begrepet (1016 kg) og ikke det norske metriske tonn. Som illustrasjon kan også nevnes ND 1959 s. 242 (*Hilde Torm*),<sup>149</sup> som gjaldt tolkningen av begrepet ”safely, always afloat”. Begrepet ble basert på ordlyden og tolket

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<sup>147</sup> Grönfors (1989) s. 52

<sup>148</sup> Se nærmere omtale i kapittel 6.4.2.

<sup>149</sup> *Dommen* er alminnelig anerkjent for å være gal, og har her kun relevans som illustrasjon.

som en garanti ("warranty") og tilsikring fra befrakters side, noe som var i overensstemmelse med engelsk rett.

Felles for ovenstående dommer er at det dreier seg om tolkningen av bestemte ord og uttrykk med særlig betydning, og som har en festnet oppfatning i markedet. Annerledes blir etter norsk tolkningstradisjon dersom det dreier seg om kontraktsbruddsanksjoner. I slike tilfeller synes norsk (og nordisk) bakgrunnsrett å ha sterkere gjennomslagskraft.<sup>150</sup> Off-hire, derimot, er ikke en kontraktsbruddsanksjon, men en risikofordelingsregel. Men også ved tolkning av off-hire klausuler vil domstolene trekke inn norsk bakgrunnsrett, jfr. dommene ND 1952 s. 442 (Hakefjord) og ND 1950 s. 398 (Karmøy). I Hakefjord-saken, som er kommentert i avsnitt 6.1.2 over, tillot retten å supplere off-hire klausulen med sjøl. § 144 (nå § 392). Saken gjaldt erstatning for drivstofforbruk og tidstap.

I voldgiftsdommen ND 1950 s. 398 gjaldt det spørsmål om en spesifikk hendelse (flak-installasjoner i Emden) falt inn under Baltimé 1939 certepartiets off-hire klausul 11(A). Domstolen fant klausulen uklar og supplerte med sjøl. § 144 annet ledd, som den fant ga uttrykk for et alminnelig kontraktsrettslig prinsipp. Videre ble det i dommen uttrykt at engelsk tolkningsmetode og den snevre antitetiske ordfortolkningen av off-hire klausuler, ikke kunne overføres til norsk rett.

Basert på dommene over samt resultatene i avsnitt 6, er det vanskelig på generell basis å trekke frem bestemte tolkningsprinsipper eller metoder som har utviklet seg i norsk rett. Det som dog synes klart, er at norske domstoler anvender norsk tolkningsmetode. Domstolene ser konkret på den enkelte kontrakt og baserer seg på en bred helhetsvurdering i fortolkningen av denne, jfr. Hakefjord og Karmøy over. Dette er i overensstemmelse med den nordiske tolkningstradisjonen. Unntaket, som er et anerkjent særtilfelle, finner vi i Arica-saken, hvor off-hire klausulen ble tolket i samsvar med engelsk rett.

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<sup>150</sup> Jfr. ND 1974.186 NV Kingsnorth, hvor bortfrakter trakk skipet som følge for sen hyrebetaling fra tidsbefrakter. Retten fant at heving av certepartiet var åpenbart urimelig. Domstolen konkluderte med at bortfrakterens handling var illojal overfor befrakteren, og fant derved at trekking av skipet var ugyldig.

Min generelle observasjon må bli at både norsk og engelsk rett synliggjør striden mellom ordlydsforståelsen og konkret rimelighet i kontraktsfortolkningen. Resultatene i undersøkelsen her viser at engelsk rett legger hovedvekt på ordlydsforståelsen og det som fremkommer gjennom det trykte formularet, jfr. "the parol evidence rule". Norsk rett, derimot, vektlegger den konkrete rimelighet og balansen i kontraktsforholdet.

## **9 OPPSUMMERING – RETTSTILSTANDEN I DAG: KAN DET HEVDES AT EN ENGELSK TILNÆRMING HAR FØRT TIL EN FORTRENGSEL AV SJØLOVEN OG NORSK BAKGRUNNSRETT?**

Utgangspunktet i norsk rett er at norske domstoler skal anvende norske rettsregler og bakgrunnsrett i sin rettsanvendelse. Dette følger bl.a. av Rt. 1921 s. 313. Saken gjaldt fortolkningen av en penalty-klausul i et certeparti. HR (v/dommer Bugge) uttaler på side 314:

"Naar det av befragterne har været gjort gjældende, at den omhandlede klausul i certepartiet paa grund av sin engelske oprindelse maatte fortolkes overensstemmende med retsopfatningen i England, kan jeg ikke være enig heri. I England er vistnok en saadan klausul i et certeparti - efter hvad derom er oplyst, og efter hvad der ogsaa synes at være paa det rene mellem parterne - ifølge retsopfatningen der uten videre betydning; men jeg kan ikke anta, at det samme kan siges om klausulen, naar den forekommer i et norsk certeparti mellem norske kontrahenter."

Dette at innebærer at det er den norske tolkningsmetoden som skal anvendes i saker for norske domstoler. Med unntak av Arica-dommen, som er anerkjent for å være et særtilfelle, underbygges dette av rettspraksis i denne undersøkelsen. Jeg viser her bl.a. til dommene



Hindanger og Karmøy,<sup>151</sup> hvor voldgiftsretten baserte seg på fortolkning basert på utfylling med norsk bakgrunnsrett. Her ble bakgrunnsretten anvendt som tolkningsmiddel.

Selv om resultatet i Arica-dommen er blitt kritisert, gir den allikevel autoritet for at certepartiens forarbeider, forhistorie og lignende kan tillegges betydelig vekt i fortolkningen av avtalte standardklausuler, jfr. voldgiftsrettens uttalelse på side 322<sup>152</sup>:

”Det tolkningsmiddel man istedenfor [enn en restriktiv tolkning i favør av den sterkere part] må gripe til, er formularkonsipistenes aktuelle eller formodede mening, formularets historie e.l.”.

Senere er det kommet flere avgjørelser som bekrefter rettstilstanden om klausulforfatterens mening med standardklausuler. Jeg nevner her bl.a. Rt 1991 s. 719 Hardhaus (=ND 1991.204). Saken gjaldt her tolkningen av en standard skipsbyggingskontrakt, men har likevel relevans i relasjon til tolkning av standard fraktavtaler. Her ble verkstedets ansvarsfraskrivelse avskåret. Begrunnelsen var en brevutveksling som hadde funnet sted mellom rederisiden (v/hr.adv. Ole Lund) og verftssiden (Mjellem & Karlsen, Bergen) om en forståelse av en bestemt klausul i kontrakten. Brevutvekslingen ble da ansett som relevant rettskildefaktor.

Ytterligere kan nevnes en eldre dom Rt 1925 s. 875 (=ND 1925.523) H. Bauermeister. Saken gjaldt tolkningen av en is-klausul i et Gencon<sup>153</sup> certeparti. Her bygget HR sin avgjørelse på uttalelser i anledning saken fra direktør J.F.Myhre i BIMCO og direktør Jantzen i Nordisk Skibsrederforening om hva som var tilsiktet med den ensidig formulerte is-klausulen.

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<sup>151</sup> Begge dommene er kommentert i kapittel 6.1.2.

<sup>152</sup> ND 1983 s. 309

<sup>153</sup> Gencon er et standard reisecertepartiformular utarbeidet av BIMCO.

Sakene H.Bauermeister, Arica og Hardhaus over viser at standardkontrakter tolkes som en deklarasjonslovtekst<sup>154</sup>, og at domstolene legger et vidt forarbeidsbegrep til grunn for å finne konsipistens mening ("lovgivers vilje"). Det som var typisk i disse sakene var at relevante forarbeider og dokumentasjon som gav gode holdepunkter for klarlegging av formularkonsipistenes intensjon. I sakene Hakefjord og Karmøy derimot, forelå ikke slik bakgrunnsinformasjon, og da ble bakgrunnsretten trukket inn.

Hvorvidt det på bakgrunn av resultatene i undersøkelsen her kan hevdes at den engelske tilnæringsmåten har ført til fortrensel av norsk og nordisk bakgrunnsrett, kan synes tvilsomt. Resultatene som er avdekket viser at det i enkelte situasjoner kan oppstå tolkningsforskjeller mellom norsk og engelsk rett. Samtidig er det også grunnlag for å si at selv om metoden er forskjellig, kan man ofte ende opp med samme tolkningsresultat.

For egen regning tror jeg utviklingen fremover vil gå i retning av økt objektivisering av tolkningsprosessen og større grad av internasjonal rettsenhet i lovanvendelsen; noe som vil gi en strengere ordlydsbasert fortolkning. På sikt vil en slik utvikling redusere betydningen av nasjonal bakgrunnsrett fordi denne får mindre vekt. Et slikt syn støttes også av Møllmann.<sup>155</sup> En slik utvikling mener jeg gir større forutsigbarhet for kontraktspartene og dermed incitament til mer effektiv handel. Begrunnelsen er at kontraktspartene da blir fortrolige med at certepartiklausuler ikke overstyres eller blir satt til side av nasjonale rettsregler. Lovgivningsarbeidet innen EU er et eksempel som understøtter denne utviklingen.

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<sup>154</sup> Falkanger (1997) s. 294

<sup>155</sup> Möllmann (2007) s. 248-252.

## 10 KILDELISTE

### Litteratur

- Bull (1988) Bull, Hans Jacob: *Avtalte standardvilkår som privat lovgivning*, i: Lov, Dom og Bok. Festskrift til Sjur Brækhus, 1988, side 99-114
- Brækhus (1998) Brækhus, Sjur: *De nordiske sjølover 100 år*, i: Sjørett, lovvalg og lover, artikler 1979-1998, Oslo, 1998, side 269-288
- Cheshire (1981) Furmston, M.P.: *Cheshire and Fifoot's law of contract*, 10<sup>th</sup> ed. London, 1981
- Falkanger (1997) Falkanger, Thor: *Tolking av sjørettslige standardkontrakter - særlig om betydningen av forarbeider*, i: Ånd og rett. Festskrift til Birger Stuevold Lassen, Oslo, 1997, side 289-302
- Falkanger/Bull (2006) Falkanger, Thor og Hans Jacob Bull: *Innføring i sjørett*, 6. utgave, Oslo, 2006
- Gram (1977) Gram, Per: *Fraktavtaler*, 4. utg., Tanum, Oslo, 1977
- Grönfors (1989) Grönfors, Kurt: *Tolkning av fraktavtal*, Göteborg, 1989 (Sjørettsforeningen i Göteborg, Skrifter 67)
- Hagstrøm (2004) Hagstrøm, Viggo: *Obligasjonsrett*, Oslo, 2004
- Høgberg (2006) Høgberg, Alf Petter: *Kontraktstolkning. Særlig om tolkningsstiler ved fortolkning av skriftlige kontrakter*, Oslo, 2006

- Jantzen (1919) Jantzen, Johs: *Tidsbefragtning*, Oslo, 1919
- Knoph (2004) Knoph, Ragnar: *Knophs oversikt over Norges rett*, 12. utgave, Oslo, 2004
- Krokeide (1977) Krokeide, Kjetil: *Forutsetningslæren og misligholdsbegrepet*, Tidsskrift for Rettsvitenskap, årg. 90 (1977), side 569-649
- Krüger (1989) Krüger, Kai: *Norsk kontraktsrett*, Bergen, 1989
- Michelet (1997) Michelet, Hans Peter: *Håndbok i Tidsbefraktning*, Oslo, 1997
- Poole (2006) Poole, Jill: *Textbook on Contract Law*, 8<sup>th</sup> ed., Oxford University Press, 2006
- Selvig (1986) Selvig, Erling: *Tolking etter norsk eller annen skandinavisk rett av certepartier og andre standardvilkår utformet på engelsk*, i Tidsskrift for Rettsvitenskap, årg. 99 (1986), side 1-26
- Solvang (2008) Solvang, Trond: *Forsinkelse i havn – Risikofordeling ved reisebefraktning*, Oslo, 2008. Doktordisputas 9. mai 2008.
- Thomas (2008) Thomas, D. Rhidian: *Legal issues relating to Time Charterparties*, Informa, London, 2008
- Time Charters (2008) *Time Charters*. Terrence Coughlin...[et al.]. 6<sup>th</sup> ed. London, 2008
- Wergeland (1996) Wergeland, Tor og Niko Wijmolst: *Shipping*, Delft University Press, Nederland, 1996

Woxholth (2006)

Woxholth, Geir: *Avtalerett*, 6. utg., Oslo, 2006

### **Lover**

Kjøpsloven (1988)

Lov om kjøp av 13. mai 1988 nr. 27

Sjøloven (1994)

Lov om sjøfarten av 24. juni 1994 nr. 39

Skadeserstatningsloven

Lov om skadeserstatning av 13. juni 1969 nr. 26

### **Forarbeider**

NOU 1993 nr. 36

Godsbefordring til sjøs.

### **RETTSPRAKSIS**

#### **Norsk rettspraksis:**

Rt. 1915 s. 881 - Herman Wedel Jarlsberg

Rt. 1921 s. 313

Rt 1925 s. 875 H. Bauermeister

Rt 1991 s. 719 Hardhaus

#### **Nordiske Domme i Sjøfartsanliggender:**

ND 1921.577 Bergen Sjørett

ND 1944.52 Rigoletto

ND 1949.540

ND 1950.192 Valo

ND 1950.398 Karmøy

ND 1952.422 Hakefjord  
ND 1954.749 Mimona SV  
ND 1959.242 Hilde Torm  
ND 1961.127 Granville  
ND 1962.68 Hindanger  
ND 1969.353 SV Transic  
ND 1974.186 NV Kingsnorth  
ND 1983.309 Arica  
ND 1993.105 SØHa Tora

**Engelsk rettspraksis:**

Apollo, The - Sidermar S.p.A. v Apollo Corporation [1978] 1 Lloyd's Rep. 200  
Aquacharm, The - Actis Co. Ltd. v. The Sanko Steamship Co. Ltd.[1982] 1 Lloyd's Rep. 7  
Berge Sund, The – Sig. Bergesen D.Y. & CO and Others v Mobil Shipping and Transportation Co [1993] Lloyd's Law Reports 2 Lloyd's Rep. 453  
Bridgestone Maru No. 3, The – Navigas International Ltd v. Trans-Offshore Inc. [1985] 2 Lloyd's Rep. 62 QB  
Good Helmsman, The – Harmony Shipping Co. S.A. v Saudi-Europe Line Ltd [1981] 1 Lloyd's Rep. 377  
Henderson v Arthur [1907] 1 KB 10  
Hillas & Co. Ltd. v Arcos Ltd. [1932] 147 LT 503  
Hvalfangerselskapet Globus v Unilever [1933] 39 Com.Cas. 1 HL  
Ilissos, The - Royal Greek Government v Minister of Transport [1948] 81 Lloyd's Rep. 355, [1948-1949] 82 Lloyd's Rep. 196  
Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 898

Istros v Dahlström Co. [1930] 38 Lloyd's Rep. 84

Jacobs v Batavia and General Plantations Trust [1924] 1 Ch 287

Jevington Court [1966] 1 Lloyd's Rep. 683

Laconian Confidence, The – Andre & Cie S.A v Orient Shipping (Rotterdam) BV [1997] 1 Lloyd's Rep. 139

Lovell & Christmas Ltd v Wall [1911] 104 LT 5

Mareva, The – Mareva Navigation Co. Ltd. v Canaria Armadora S.A. [1977] 1 Lloyd's Rep. 368

Marika M, The – Eastern Mediterranean Maritime (Liechtenstein) Ltd v Unimarine S.A. [1981] 2 Lloyd's Rep. 622

Mastro Giorgis, The – Belcore Maritime Corporation v F.LLI. Moretti Cereali S.p.A [1983] 2 Lloyd's Rep. 66

Moorcock, The [1889] 14 PD 64

New Horizon, The - Tramp Shipping Corp. v. Greenwich Marine Inc. [1975] 2 Lloyd's Rep. 314

Pythia, The – Western Sealanes Corporation v Unimarine S.A. [1982] 2 Lloyd's Rep. 160

Smailes v. Evans [1917] 2 K.B. 54

Tynedale v. Anglo-Soviet [1936] 41 Com. Cas. 206

Zanzibar Steamship Co. Ltd. [1901] 6 Com. Cas. 253 and 7 Com. Cas. 254

Westfalia, The - Hogarth (Hugh) and Owners of Westfalia v Miller (Alexander) Brother & Co, (H.L.) [1891]

## 11 FORKORTELSER

Afs	Arkiv for Sjørett
AMC	American Maritime Cases
BIMCO	The Baltic and International Maritime Conference, København
DH	Danmarks Højesterett
HR	Norges Høyesterett
IMO	International Maritime Organization, London
Lloyd's Rep.	Lloyd's Law Reports
ND	Nordiske Domme i Sjøfartsanliggender
NV	Norsk voldgiftsdom
P&I	Protection and Indemnity
SH	Högsta Domstolen i Sverige
Sjøl.	Lov om sjøfarten av 24. juni 1994 nr. 39
SMA	Societe of Maritime Arbitrators, New York
SV	Svensk voldgift
TC	Timecharter



## 12 BILAG



PART I

**BIMCO UNIFORM TIME-CHARTER  
(AS REVISED 2001)  
CODE NAME: "BALTIME 1939"**

Issued 1909; Amended 1911; 1912; 1920; 1920; 1939; 1950; 1974; and 2001

1. Shipbroker	2. Place and Date of Charter	
3. Owners/Place of business	4. Charterers/Place of business	
5. Vessel's Name	6. GT/NT	
7. Class	8. Indicated brake horse power (bhp)	
9. Total tons d.w. (abt.) on summer freeboard	10. Cubic feet grain/bale capacity	
11. Permanent bunkers (abt.)	12. Speed capability in knots (abt.) on a consumption in tons (abt.) of	
13. Present position	14. Period of hire (Cl. 1)	
15. Port of delivery (Cl. 1)	16. Time of delivery (Cl. 1)	
17. (a) Trade limits (Cl. 2)		
(b) Cargo exclusions specially agreed		
18. Bunkers on re-delivery (state min. and max. quantity)(Cl. 5)	19. Charter hire (Cl. 6)	
20. Hire payment (state currency, method and place of payment; also beneficiary and bank account) (Cl. 6)		
21. Place or range of re-delivery (Cl. 7)	22. Cancelling date (Cl. 21)	
23. Dispute resolution (state 22(A), 22(B) or 22(C); if 22(C) agreed Place of Arbitration <u>must</u> be stated) (Cl. 22)	24. Brokerage commission and to whom payable (Cl. 24)	
25. Numbers of additional clauses covering special provisions, if agreed		

**DRAFT COPY**

**DRAFT COPY**

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include PART I as well as PART II. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict.

Signature (Owners)	Signature (Charterers)
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**PART II**  
**“BALTIME 1939” Uniform Time-Charter (as revised 2001)**

It is agreed between the party mentioned in Box 3 as Owners of the Vessel named in Box 5 of the gross/net tonnage indicated in Box 6, classed as stated in Box 7 and of indicated brake horse power (bhp) as stated in Box 8, carrying about the number of tons deadweight indicated in Box 9 on summer freeboard inclusive of bunkers, stores and provisions, having as per builder's plan a cubic-foot grain/bale capacity as stated in Box 10, exclusive of permanent bunkers, which contain about the number of tons stated in Box 11, and fully loaded capable of steaming about the number of knots indicated in Box 12 in good weather and smooth water on a consumption of about the number of tons fuel oil stated in Box 12, now in position as stated in Box 13 and the party mentioned as Charterers in Box 4, as follows:

**1. Period/Port of Delivery/Time of Delivery**

The Owners let, and the Charterers hire the Vessel for a period of the number of calendar months indicated in Box 14 from the time (not a Sunday or a legal Holiday unless taken over) the Vessel is delivered and placed at the disposal of the Charterers between 9 a.m. and 6 p.m., or between 9 a.m. and 2 p.m. if on Saturday, at the port stated in Box 15 in such available berth where she can safely lie always afloat, as the Charterers may direct, the Vessel being in every way fitted for ordinary cargo service. The Vessel shall be delivered at the time indicated in Box 16.

**2. Trade**

The Vessel shall be employed in lawful trades for the carriage of lawful merchandise only between safe ports or places where the Vessel can safely lie always afloat within the limits stated in Box 17. No live stock nor injurious, inflammable or dangerous goods (such as acids, explosives, calcium carbide, ferro silicon, naphtha, motor spirit, tar, or any of their products) shall be shipped.

**3. Owners' Obligations**

The Owners shall provide and pay for all provisions and wages, for insurance of the Vessel, for all deck and engine-room stores and maintain her in a thoroughly efficient state in hull and machinery during service. The Owners shall provide winchmen from the crew to operate the Vessel's cargo handling gear, unless the crew's employment conditions or local union or port regulations prohibit this, in which case qualified shore-winchmen shall be provided and paid for by the Charterers.

**4. Charterers' Obligations**

The Charterers shall provide and pay for all fuel oil, port charges, pilotages (whether compulsory or not), canal steersmen, boatage, lights, tug-assistance, consular charges (except those pertaining to the Master, officers and crew), canal, dock and other dues and charges, including any foreign general municipality or state taxes, also all dock, harbour and tonnage dues at the ports of delivery and re-delivery (unless incurred through cargo carried before delivery or after re-delivery), agencies, commissions, also shall arrange and pay for loading, trimming, stowing (including dunnage and shifting boards, excepting any already on board), unloading, weighing, tallying and delivery of cargoes, surveys on hatches, meals supplied to officials and men in their service and all other charges and expenses whatsoever including detention and expenses through quarantine (including cost of fumigation and disinfection). All ropes, slings and special runners actually used for loading

and discharging and any special gear, including special ropes and chains required by the custom of the port for mooring shall be for the Charterers' account. The Vessel shall be fitted with winches, derricks, wheels and ordinary runners capable of handling lifts up to 2 tons.

**5. Bunkers**

The Charterers at port of delivery and the Owners at port of re-delivery shall take over and pay for all fuel oil remaining in the Vessel's bunkers at current price at the respective ports. The Vessel shall be re-delivered with not less than the number of tons and not exceeding the number of tons of fuel oil in the Vessel's bunkers stated in Box 18.

**6. Hire**

The Charterers shall pay as hire the rate stated in Box 19 per 30 days, commencing in accordance with Clause 1 until her re-delivery to the Owners. Payment of hire shall be made in cash, in the currency stated in Box 20, without discount, every 30 days, in advance, and in the manner prescribed in Box 20. In default of payment the Owners shall have the right of withdrawing the Vessel from the service of the Charterers, without noting any protest and without interference by any court or any other formality whatsoever and without prejudice to any claim the Owners may otherwise have on the Charterers under the Charter.

**7. Re-delivery**

The Vessel shall be re-delivered on the expiration of the Charter in the same good order as when delivered to the Charterers (fair wear and tear excepted) at an ice-free port in the Charterers' option at the place or within the range stated in Box 21, between 9 a.m. and 6 p.m., and 9 a.m. and 2 p.m. on Saturday, but the day of re-delivery shall not be a Sunday or legal Holiday. The Charterers shall give the Owners not less than ten days' notice at which port and on about which day the Vessel will be re-delivered. Should the Vessel be ordered on a voyage by which the Charter period will be exceeded the Charterers shall have the use of the Vessel to enable them to complete the voyage, provided it could be reasonably calculated that the voyage would allow redelivery about the time fixed for the termination of the Charter, but for any time exceeding the termination date the Charterers shall pay the market rate if higher than the rate stipulated herein.

**8. Cargo Space**

The whole reach and burthen of the Vessel, including lawful deck-capacity shall be at the Charterers' disposal, reserving proper and sufficient space for the Vessel's Master, officers, crew, tackle, apparel, furniture, provisions and stores.

**9. Master**

The Master shall prosecute all voyages with the utmost despatch and shall render customary assistance with the Vessel's crew. The Master shall be under the orders of the Charterers as regards employment, agency, or other arrangements. The Charterers shall indemnify the Owners against all consequences or liabilities arising from the Master, officers or Agents signing Bills of Lading or other documents or otherwise complying with such orders, as well as from any irregularity in the Vessel's papers or for overcarrying goods. The Owners shall not be responsible for shortage, mixture, marks, nor for number of pieces or packages, nor for damage to or claims on cargo caused by bad stowage or otherwise. If

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the Charterers have reason to be dissatisfied with the	132	able on account of ice to reach the place or to get out	198
conduct of the Master or any officer, the Owners, on	133	after having completed loading or discharging. The	199
receiving particulars of the complaint, promptly to	134	Vessel shall not be obliged to force ice. If on account of	200
investigate the matter, and, if necessary and practicable,	135	ice the Master considers it dangerous to remain at the	201
to make a change in the appointments.	136	loading or discharging place for fear of the Vessel being	202
<b>10. Directions and Logs</b>	137	frozen in and/or damaged, he has liberty to sail to a	203
The Charterers shall furnish the Master with all	138	convenient open place and await the Charterers' fresh	204
instructions and sailing directions and the Master shall	139	instructions. Unforeseen detention through any of above	205
keep full and correct logs accessible to the Charterers	140	causes shall be for the Charterers' account.	206
or their Agents.	141	<b>15. Loss of Vessel</b>	207
<b>11. Suspension of Hire etc.</b>	142	Should the Vessel be lost or missing, hire shall cease	208
(A) In the event of drydocking or other necessary	143	from the date when she was lost. If the date of loss	209
measures to maintain the efficiency of the Vessel,	144	cannot be ascertained half hire shall be paid from the	210
deficiency of men or Owners' stores, breakdown of	145	date the Vessel was last reported until the calculated	211
machinery, damage to hull or other accident, either	146	date of arrival at the destination. Any hire paid in advance	212
hindering or preventing the working of the Vessel and	147	shall be adjusted accordingly.	213
continuing for more than twenty-four consecutive hours,	148	<b>16. Overtime</b>	214
no hire shall be paid in respect of any time lost thereby	149	The Vessel shall work day and night if required. The	215
during the period in which the Vessel is unable to perform	150	Charterers shall refund the Owners their outlays for all	216
the service immediately required. Any hire paid in	151	overtime paid to officers and crew according to the hours	217
advance shall be adjusted accordingly.	152	and rates stated in the Vessel's articles.	218
(B) In the event of the Vessel being driven into port or to	153	<b>17. Lien</b>	219
anchorage through stress of weather, trading to shallow	154	The Owners shall have a lien upon all cargoes and	220
harbours or to rivers or ports with bars or suffering an	155	sub-freights belonging to the Time-Charterers and any	221
accident to her cargo, any detention of the Vessel and/or	156	Bill of Lading freight for all claims under this Charter,	222
expenses resulting from such detention shall be for the	157	and the Charterers shall have a lien on the Vessel for all	223
Charterers' account even if such detention and/or	158	moneys paid in advance and not earned.	224
expenses, or the cause by reason of which either is	159	<b>18. Salvage</b>	225
incurred, be due to, or be contributed to by, the	160	All salvage and assistance to other vessels shall be for	226
negligence of the Owners' servants.	161	the Owners' and the Charterers' equal benefit after	227
<b>12. Responsibility and Exemption</b>	162	deducting the Master's, officers' and crew's proportion	228
The Owners only shall be responsible for delay in	163	and all legal and other expenses including hire paid	229
delivery of the Vessel or for delay during the currency of	164	under the charter for time lost in the salvage, also repairs	230
the Charter and for loss or damage to goods onboard, if	165	of damage and fuel oil consumed. The Charterers shall	231
such delay or loss has been caused by want of due	166	be bound by all measures taken by the Owners in order	232
diligence on the part of the Owners or their Manager in	167	to secure payment of salvage and to fix its amount.	233
making the Vessel seaworthy and fitted for the voyage	168	<b>19. Sublet</b>	234
or any other personal act or omission or default of the	169	The Charterers shall have the option of subletting the	235
Owners or their Manager. The Owners shall not be	170	Vessel, giving due notice to the Owners, but the original	236
responsible in any other case nor for damage or delay	171	Charterers shall always remain responsible to the	237
whatsoever and howsoever caused even if caused by	172	Owners for due performance of the Charter.	238
the neglect or default of their servants. The Owners shall	173	<b>20. War ("Conwartime 1993")</b>	239
not be liable for loss or damage arising or resulting	174	(A) For the purpose of this Clause, the words:	240
from strikes, lock-outs or stoppage or restraint of labour	175	(i) "Owners" shall include the shipowners, bareboat	241
(including the Master, officers or crew) whether partial	176	charterers, disponent owners, managers or other	242
or general. The Charterers shall be responsible for loss	177	operators who are charged with the management of the	243
or damage caused to the Vessel or to the Owners by	178	Vessel, and the Master; and	244
goods being loaded contrary to the terms of the Charter	179	(ii) "War Risks" shall include any war (whether actual or	245
or by improper or careless bunkering or loading, stowing	180	threatened), act of war, civil war, hostilities, revolution,	246
or discharging of goods or any other improper or	181	rebellion, civil commotion, warlike operations, the laying	247
negligent act on their part or that of their servants.	182	of mines (whether actual or reported), acts of piracy,	248
<b>13. Advances</b>	183	acts of terrorists, acts of hostility or malicious damage,	249
The Charterers or their Agents shall advance to the	184	blockades (whether imposed against all vessels or	250
Master, if required, necessary funds for ordinary	185	imposed selectively against vessels of certain flags or	251
disbursements for the Vessel's account at any port	186	ownership, or against certain cargoes or crews or	252
charging only interest at 6 per cent. p.a., such advances	187	otherwise howsoever), by any person, body, terrorist or	253
shall be deducted from hire.	188	political group, or the Government of any state	254
<b>14. Excluded Ports</b>	189	whatsoever, which, in the reasonable judgement of the	255
The Vessel shall not be ordered to nor bound to enter:	190	Master and/or the Owners, may be dangerous or are	256
(A) any place where fever or epidemics are prevalent or	191	likely to be or to become dangerous to the Vessel, her	257
to which the Master, officers and crew by law are not	192	cargo, crew or other persons on board the Vessel.	258
bound to follow the Vessel;	193	(B) The Vessel, unless the written consent of the Owners	259
(B) any ice-bound place or any place where lights,	194	be first obtained, shall not be ordered to or required to	260
lightships, marks and buoys are or are likely to be	195	continue to or through, any port, place, area or zone	261
withdrawn by reason of ice on the Vessel's arrival or	196	(whether of land or sea), or any waterway or canal, where	262
where there is risk that ordinarily the Vessel will not be	197		

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it appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Master and/or the Owners, may be, or are likely to be, exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, she shall be at liberty to leave it.

**(C)** The Vessel shall not be required to load contraband cargo, or to pass through any blockade, whether such blockade be imposed on all vessels, or is imposed selectively in any way whatsoever against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to a belligerent's right of search and/or confiscation.

**(D) (i)** The Owners may effect war risks insurance in respect of the Hull and Machinery of the Vessel and their other interests (including, but not limited to, loss of earnings and detention, the crew and their Protection and Indemnity Risks), and the premiums and/or calls therefor shall be for their account.

**(ii)** If the Underwriters of such insurance should require payment of premiums and/or calls because, pursuant to the Charterers' orders, the Vessel is within, or is due to enter and remain within, any area or areas which are specified by such Underwriters as being subject to additional premiums because of War Risks, then such premiums and/or calls shall be reimbursed by the Charterers to the Owners at the same time as the next payment of hire is due.

**(E)** If the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an area which is dangerous in the manner defined by the said terms, then such bonus or additional wages shall be reimbursed to the Owners by the Charterers at the same time as the next payment of hire is due.

**(F)** The Vessel shall have liberty:-

**(i)** to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose laws the Owners are subject, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;

**(ii)** to comply with the order, directions or recommendations of any war risks underwriters who have the authority to give the same under the terms of the war risks insurance;

**(iii)** to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;

**(iv)** to divert and discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;

**(v)** to divert and call at any other port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment or other sanctions.

**(G)** If in accordance with their rights under the foregoing provisions of this Clause, the Owners shall refuse to proceed to the loading or discharging ports, or any one

or more of them, they shall immediately inform the Charterers. No cargo shall be discharged at any alternative port without first giving the Charterers notice of the Owners' intention to do so and requesting them to nominate a safe port for such discharge. Failing such nomination by the Charterers within 48 hours of receipt of such notice and request, the Owners may discharge the cargo at any safe port of their own choice.

**(H)** If in compliance with any of the provisions of sub-clauses (B) to (G) of this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charter.

**21. Cancelling**

Should the Vessel not be delivered by the date indicated in Box 22, the Charterers shall have the option of cancelling. If the Vessel cannot be delivered by the cancelling date, the Charterers, if required, shall declare within 48 hours after receiving notice thereof whether they cancel or will take delivery of the Vessel.

**22. Dispute Resolution**

**(A)** This Charter shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Charter shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

**(B)** This Charter shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.

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In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.	403 404 405 406 407 408	necessary to protect its interest.	445
*) (C) This Charter shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Charter shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.	409 410 411 412 413 414	(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.	446 447 448 449 450
(D) Notwithstanding (A), (B) or (C) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Charter.	415 416 417 418	(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.	451 452 453 454
In the case of a dispute in respect of which arbitration has been commenced under (A), (B) or (C) above, the following shall apply:-	419 420 421	(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.	455 456 457 458 459
(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.	422 423 424 425	(Note: <i>The parties should be aware that the mediation process may not necessarily interrupt time limits.</i> )	460 461
(ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.	426 427 428 429 430 431 432 433 434 435 436 437 438	(E) If Box 23 in Part I is not appropriately filled in, sub-clause (A) of this Clause shall apply. Sub-clause (D) shall apply in all cases.	462 463 464
(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.	439 440 441 442	*) (A), (B) and (C) are alternatives; indicate alternative agreed in Box 23.	465 466
(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers	443 444	<b>23. General Average</b>	467
		General Average shall be settled according to York/Antwerp Rules, 1994 and any subsequent modification thereof. Hire shall not contribute to General Average.	468 469 470
		<b>24. Commission</b>	471
		The Owners shall pay a commission at the rate stated in Box 24 to the party mentioned in Box 24 on any hire paid under the Charter, but in no case less than is necessary to cover the actual expenses of the Brokers and a reasonable fee for their work. If the full hire is not paid owing to breach of Charter by either of the parties the party liable therefor shall indemnify the Brokers against their loss of commission. Should the parties agree to cancel the Charter, the Owners shall indemnify the Brokers against any loss of commission but in such case the commission not to exceed the brokerage on one year's hire.	472 473 474 475 476 477 478 479 480 481 482 483

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# Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange

November 6th, 1913—Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

1 This Charter Party, made and concluded in..... day of..... 19.....  
2 Between.....  
3 Owners of the good..... } Steamship {  
4 of..... tons gross register, and..... } Motorship { ..... of.....  
5 and with hull, machinery and equipment in a thoroughly efficient state, and classed.....  
6 at..... of about..... cubic feet bale capacity, and about..... tons of 2240 lbs.  
7 deadweight capacity (cargo and bunkers, including fresh water and stores not exceeding one and one-half percent of ship's deadweight capacity,  
8 allowing a minimum of fifty tons) on a draft of..... feet..... inches on..... Summer freeboard, inclusive of permanent bunkers,  
9 which are of the capacity of about..... tons of fuel, and capable of steaming, fully laden, under good weather  
10 conditions about..... knots on a consumption of about..... tons of best Welsh coal—best grade fuel oil—best grade Diesel oil,  
11 now.....  
12 ..... and..... Charterers of the City of.....  
13 **Witnesseth,** That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for  
14 about.....  
15 ..... within below mentioned trading limits.  
16 Charterers to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for  
17 the fulfillment of this Charter Party.  
18 Vessel to be placed at the disposal of the Charterers, at.....  
19 .....  
20 in such dock or at such wharf or place (where she may safely lie, always afloat, at all times of tide, except as otherwise provided in clause No. 6), as  
21 the Charterers may direct. If such dock, wharf or place be not available time to count as provided for in clause No. 5. Vessel on her delivery to be  
22 ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches and  
23 donkey boiler with sufficient steam power, or if not equipped with donkey boiler, then other power sufficient to run all the winches at one and the same  
24 time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchan-  
25 dise, including petroleum or its products, in proper containers, excluding.....  
26 (vessel is not to be employed in the carriage of Live Stock, but Charterers are to have the privilege of shipping a small number on deck at their risk,  
27 all necessary fittings and other requirements to be for account of Charterers), in such lawful trades, between safe port and/or ports in British North  
28 America, and/or United States of America, and/or West Indies, and/or Central America, and/or Caribbean Sea, and/or Gulf of Mexico, and/or  
29 Mexico, and/or South America..... and/or Europe  
30 and/or Africa, and/or Asia, and/or Australia, and/or Tasmania, and/or New Zealand, but excluding Magdalena River, River St. Lawrence between  
31 October 31st and May 15th, Hudson Bay and all unsafe ports; also excluding, when out of season, White Sea, Black Sea and the Baltic,  
32 .....  
33 .....  
34 .....  
35 as the Charterers or their Agents shall direct, on the following conditions:  
36 1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew; shall pay for the  
37 insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water and maintain her class and keep  
38 the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.  
39 2. That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions,  
40 Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated, but when the vessel puts into  
41 a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of  
42 illness of the crew to be for Owners account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this  
43 charter to be for Charterers account. All other fumigations to be for Charterers account after vessel has been on charter for a continuous period  
44 of six months or more.  
45 Charterers are to provide necessary dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo, but  
46 Owners to allow them the use of any dunnage and shifting boards already aboard vessel. Charterers to have the privilege of using shifting boards  
47 for dunnage, they making good any damage thereto.  
48 3. That the Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel remaining on  
49 board the vessel at the current prices in the respective ports, the vessel to be delivered with not less than..... tons and not more than  
50 ..... tons and to be re-delivered with not less than..... tons and not more than..... tons.

4. That the Charterer shall pay for the use and hire of the said Vessel at the rate of ..... United States Currency per ton on vessel's tonnage deadweight carrying capacity, including bunkers and stores, on ..... summer freeboard, per Calendar Month, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month; hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at ..... unless otherwise mutually agreed. Charterers are to give Owners not less than ..... days notice of vessels expected date of re-delivery, and probable port.

5. Payment of said hire to be made in New York in cash in United States Currency, semi-monthly in advance, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or on any breach of this Charter Party, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers. Time to count from 7 a.m. on the working day following that on which written notice of readiness has been given to Charterers or their Agents before 4 p.m., but if required by Charterers, they to have the privilege of using vessel at once, such time used to count as hire.

Cash for vessel's ordinary disbursements at any port may be advanced as required by the Captain, by the Charterers or their Agents, subject to 2½% commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application of such advances.

6. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that Charterers or their Agents may direct, provided the vessel can safely lie always afloat at any time of tide, except at such places where it is customary for similar size vessels to safely lie aground.

7. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodations for Supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. Charterers have the privilege of passengers as far as accommodations allow, Charterers paying Owners ..... per day per passenger for accommodations and meals. However, it is agreed that in case any fines or extra expenses are incurred in the consequence of the carriage of passengers, Charterers are to bear such risk and expense.

8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, and trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mate's or Tally Clerk's receipts.

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the vessel and see that voyages are prosecuted with the utmost despatch. He is to be furnished with free accommodation, and same fare as provided for Captain's table, Charterers paying at the rate of \$1.00 per day. Owners to victual Pilots and Customs Officers, and also, when authorized by Charterers or their Agents, to victual Tally Clerks, Stevedore's Foreman, etc., Charterers paying at the current rate per meal, for all such victualling.

11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the Charterers, their Agents or Supercargo, when required, with a true copy of daily Logs, showing the course of the vessel and distance run and the consumption of fuel.

12. That the Captain shall use diligence in caring for the ventilation of the cargo.

13. That the Charterers shall have the option of continuing this charter for a further period of ..... on giving written notice thereof to the Owners or their Agents ..... days previous to the expiration of the first-named term, or any declared option.

14. That if required by Charterers, time not to commence before ..... and should vessel not have given written notice of readiness on or before ..... but not later than 4 p.m. Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of vessel's readiness.

15. That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost; and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra fuel consumed in consequence thereof, and all extra expenses shall be deducted from the hire.

16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted. The vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

18. That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, including General Average contributions, and the Charterers to have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once. Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the owners in the vessel.

19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and Crew's proportion. General Average shall be adjusted, stated and settled, according to Rules 1 to 15, inclusive, 17 to 22, inclusive, and Rule F of York-Antwerp Rules 1974, at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier



121 or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if  
122 required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the  
123 carrier, be payable in United States money and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the  
124 place of adjustment in the name of the adjuster pending settlement of the General Average and refunds or credit balances, if any, shall be paid in  
125 United States money.

126 In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever,  
127 whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract, or otherwise, the  
128 goods, the shipper and the consignee, jointly and severally, shall contribute with the carrier in general average to the payment of any sacrifices,  
129 losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the  
130 goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or  
131 ships belonged to strangers.

132 Provisions as to General Average in accordance with the above are to be included in all bills of lading issued hereunder.  
133 20. Fuel used by the vessel while off hire, also for cooking, condensing water, or for grates and stoves to be agreed to as to quantity, and the  
134 cost of replacing same, to be allowed by Owners.

135 21. That as the vessel may be from time to time employed in tropical waters during the term of this Charter, Vessel is to be docked at a  
136 convenient place, bottom cleaned and painted whenever Charterers and Captain think necessary, at least once in every six months, reckoning from  
137 time of last painting, and payment of the hire to be suspended until she is again in proper state for the service.

138 .....

139 .....

140 22. Owners shall maintain the gear of the ship as fitted, providing gear (for all derricks) capable of handling lifts up to three tons, also  
141 providing ropes, falls, slings and blocks. If vessel is fitted with derricks capable of handling heavier lifts, Owners are to provide necessary gear for  
142 same, otherwise equipment and gear for heavier lifts shall be for Charterers' account. Owners also to provide on the vessel lanterns and oil for  
143 night work, and vessel to give use of electric light when so fitted, but any additional lights over those on board to be at Charterers' expense. The  
144 Charterers to have the use of any gear on board the vessel.

145 23. Vessel to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging;  
146 steamer to provide one winchman per hatch to work winches day and night, as required, Charterers agreeing to pay officers, engineers, winchmen,  
147 deck hands and donkeymen for overtime work done in accordance with the working hours and rates stated in the ship's articles. If the rules of the  
148 port, or labor unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of a disabled winch or winches, or  
149 insufficient power to operate winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned  
150 thereby.

151 24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained  
152 in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels,  
153 etc.," in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, both  
154 of which are to be included in all bills of lading issued hereunder:

U. S. A. Clause Paramount

155 This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April  
156 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of  
157 any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading  
158 be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

Both-to-Blame Collision Clause

160 If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the  
161 Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried  
162 hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss  
163 or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-  
164 carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her  
165 owners as part of their claim against the carrying ship or carrier.

166 25. The vessel shall not be required to enter any ice-bound port, or any port where lights or light-ships have been or are about to be with-  
167 drawn by reason of ice, or where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter the  
168 port or to get out after having completed loading or discharging.

169 26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the  
170 navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account.

171 27. A commission of 2½ per cent is payable by the Vessel and Owners to  
172 .....

173 .....

174 on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.

175 28. An address commission of 2½ per cent payable to.....on the hire earned and paid under this Charter.

By cable authority from

The original Charter Party in our possession.

As.....For Owners

BROKERS.

Code Name: "NYPE 93"

Recommended by:  
The Baltic and International Maritime Council (BIMCO)  
The Federation of National Associations of  
Ship Brokers and Agents (FONASBA)



# TIME CHARTER®

New York Produce Exchange Form  
Issued by the Association of Ship Brokers and Agents (U.S.A.), Inc.

November 6th, 1913 - Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946;  
Revised June 12th, 1981; September 14th 1993.

Draft Copy

**THIS CHARTER PARTY**, made and concluded in 1  
this day of 19 2

Between 3

Owners of the Vessel described below, and 4

Charterers. 5

**Description of Vessel** 6

Name Flag Built (year). 7

Port and number of Registry 8

Classed in 9

Deadweight long\*/metric\* tons (cargo and bunkers, including freshwater and 10

stores not exceeding long\*/metric\* tons) on a salt water draft of 11

on summer freeboard. 12

Capacity cubic feet grain cubic feet bale space. 13

Tonnage GT/GRT. 14

Speed about knots, fully laden, in good weather conditions up to and including maximum 15

Force on the Beaufort wind scale, on a consumption of about long\*/metric\* 16

tons of 17

\* Delete as appropriate. 18

For further description see Appendix "A" (if applicable) 19

1. **Duration** 20

The Owners agree to let and the Charterers agree to hire the Vessel from the time of delivery for a period 21

of 22

within below mentioned trading limits. 23

2. **Delivery** 24

The Vessel shall be placed at the disposal of the Charterers at 25

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31

The Vessel on her delivery 32

shall be ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted 33

for ordinary cargo service, having water ballast and with sufficient power to operate all cargo-handling gear 34

simultaneously. 35

The Owners shall give the Charterers not less than days notice of expected date of 36

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delivery.	38
<b>3. <u>On-Off Hire Survey</u></b>	39
Prior to delivery and redelivery the parties shall, unless otherwise agreed, each appoint surveyors, for their respective accounts, who shall not later than at first loading port/last discharging port respectively, conduct joint on-hire/off-hire surveys, for the purpose of ascertaining quantity of bunkers on board and the condition of the Vessel. A single report shall be prepared on each occasion and signed by each surveyor, without prejudice to his right to file a separate report setting forth items upon which the surveyors cannot agree.	40 41 42 43 44
If either party fails to have a representative attend the survey and sign the joint survey report, such party shall nevertheless be bound for all purposes by the findings in any report prepared by the other party.	45 46
On-hire survey shall be on Charterers' time and off-hire survey on Owners' time.	47
<b>4. <u>Dangerous Cargo/Cargo Exclusions</u></b>	48
(a) The Vessel shall be employed in carrying lawful merchandise excluding any goods of a dangerous, injurious, flammable or corrosive nature unless carried in accordance with the requirements or recommendations of the competent authorities of the country of the Vessel's registry and of ports of shipment and discharge and of any intermediate countries or ports through whose waters the Vessel must pass. Without prejudice to the generality of the foregoing, in addition the following are specifically excluded: livestock of any description, arms, ammunition, explosives, nuclear and radioactive materials,	49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64
(b) If IMO-classified cargo is agreed to be carried, the amount of such cargo shall be limited to tons and the Charterers shall provide the Master with any evidence he may reasonably require to show that the cargo is packaged, labelled, loaded and stowed in accordance with IMO regulations, failing which the Master is entitled to refuse such cargo or, if already loaded, to unload it at the Charterers' risk and expense.	65 66 67 68 69
<b>5. <u>Trading Limits</u></b>	70
The Vessel shall be employed in such lawful trades between safe ports and safe places within	71 72
excluding	73
as the Charterers shall direct.	74 75 76
<b>6. <u>Owners to Provide</u></b>	77
The Owners shall provide and pay for the insurance of the Vessel, except as otherwise provided, and for all provisions, cabin, deck, engine-room and other necessary stores, including boiler water; shall pay for wages, consular shipping and discharging fees of the crew and charges for port services pertaining to the crew; shall maintain the Vessel's class and keep her in a thoroughly efficient state in hull, machinery and equipment for and during the service, and have a full complement of officers and crew.	78 79 80 81 82
<b>7. <u>Charterers to Provide</u></b>	83
The Charterers, while the Vessel is on hire, shall provide and pay for all the bunkers except as otherwise agreed; shall pay for port charges (including compulsory watchmen and cargo watchmen and compulsory garbage disposal), all communication expenses pertaining to the Charterers' business at cost, pilotages,	84 85 86



The Charterers shall give the Owners not less than \_\_\_\_\_ days notice of the Vessel's expected date and probable port of redelivery. 135  
136

For the purpose of hire calculations, the times of delivery, redelivery or termination of charter shall be adjusted to GMT. 137  
138

11. **Hire Payment** 139

(a) Payment 140

Payment of Hire shall be made so as to be received by the Owners or their designated payee in \_\_\_\_\_, viz \_\_\_\_\_ in \_\_\_\_\_ currency, or in United States Currency, in funds available to the Owners on the due date, 15 days in advance, and for the last month or part of same the approximate amount of hire, and should same not cover the actual time, hire shall be paid for the balance day by day as it becomes due, if so required by the Owners. Failing the punctual and regular payment of the hire, or on any fundamental breach whatsoever of this Charter Party, the Owners shall be at liberty to withdraw the Vessel from the service of the Charterers without prejudice to any claims they (the Owners) may otherwise have on the Charterers. 141  
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At any time after the expiry of the grace period provided in Sub-clause 11 (b) hereunder and while the hire is outstanding, the Owners shall, without prejudice to the liberty to withdraw, be entitled to withhold the performance of any and all of their obligations hereunder and shall have no responsibility whatsoever for any consequences thereof, in respect of which the Charterers hereby indemnify the Owners, and hire shall continue to accrue and any extra expenses resulting from such withholding shall be for the Charterers' account. 153  
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(b) Grace Period 159

Where there is failure to make punctual and regular payment of hire due to oversight, negligence, errors or omissions on the part of the Charterers or their bankers, the Charterers shall be given by the Owners \_\_\_\_\_ clear banking days (as recognized at the agreed place of payment) written notice to rectify the failure, and when so rectified within those \_\_\_\_\_ days following the Owners' notice, the payment shall stand as regular and punctual. 160  
161  
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Failure by the Charterers to pay the hire within \_\_\_\_\_ days of their receiving the Owners' notice as provided herein, shall entitle the Owners to withdraw as set forth in Sub-clause 11 (a) above. 165  
166

(c) Last Hire Payment 167

Should the Vessel be on her voyage towards port of redelivery at the time the last and/or the penultimate payment of hire is/are due, said payment(s) is/are to be made for such length of time as the Owners and the Charterers may agree upon as being the estimated time necessary to complete the voyage, and taking into account bunkers actually on board, to be taken over by the Owners and estimated disbursements for the Owners' account before redelivery. Should same not cover the actual time, hire is to be paid for the balance, day by day, as it becomes due. When the Vessel has been redelivered, any difference is to be refunded by the Owners or paid by the Charterers, as the case may be. 168  
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(d) Cash Advances 175

Cash for the Vessel's ordinary disbursements at any port may be advanced by the Charterers, as required by the Owners, subject to 2½ percent commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application of such advances. 176  
177  
178

12. **Berths** 179

The Vessel shall be loaded and discharged in any safe dock or at any safe berth or safe place that Charterers or their agents may direct, provided the Vessel can safely enter, lie and depart always afloat at any time of tide.

**13. Spaces Available**

(a) The whole reach of the Vessel's holds, decks, and other cargo spaces (not more than she can reasonably and safely stow and carry), also accommodations for supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for the Vessel's officers, crew, tackle, apparel, furniture, provisions, stores and fuel.

(b) In the event of deck cargo being carried, the Owners are to be and are hereby indemnified by the Charterers for any loss and/or damage and/or liability of whatsoever nature caused to the Vessel as a result of the carriage of deck cargo and which would not have arisen had deck cargo not been loaded.

**14. Supercargo and Meals**

The Charterers are entitled to appoint a supercargo, who shall accompany the Vessel at the Charterers' risk and see that voyages are performed with due despatch. He is to be furnished with free accommodation and same fare as provided for the Master's table, the Charterers paying at the rate of per day. The Owners shall victual pilots and customs officers, and also, when authorized by the Charterers or their agents, shall victual tally clerks, stevedore's foreman, etc., Charterers paying at the rate of per meal for all such victualling.

**15. Sailing Orders and Logs**

The Charterers shall furnish the Master from time to time with all requisite instructions and sailing directions, in writing, in the English language, and the Master shall keep full and correct deck and engine logs of the voyage or voyages, which are to be patent to the Charterers or their agents, and furnish the Charterers, their agents or supercargo, when required, with a true copy of such deck and engine logs, showing the course of the Vessel, distance run and the consumption of bunkers. Any log extracts required by the Charterers shall be in the English language.

**16. Delivery/Cancelling**

If required by the Charterers, time shall not commence before and should the Vessel not be ready for delivery on or before but not later than hours, the Charterers shall have the option of cancelling this Charter Party.

**Extension of Cancelling**

If the Owners warrant that, despite the exercise of due diligence by them, the Vessel will not be ready for delivery by the cancelling date, and provided the Owners are able to state with reasonable certainty the date on which the Vessel will be ready, they may, at the earliest seven days before the Vessel is expected to sail for the port or place of delivery, require the Charterers to declare whether or not they will cancel the Charter Party. Should the Charterers elect not to cancel, or should they fail to reply within two days or by the cancelling date, whichever shall first occur, then the seventh day after the expected date of readiness for delivery as notified by the Owners shall replace the original cancelling date. Should the Vessel be further delayed, the Owners shall be entitled to require further declarations of the Charterers in accordance with this Clause.

**17. Off Hire**

In the event of loss of time from deficiency and/or default and/or strike of officers or crew, or deficiency of stores, fire, breakdown of, or damages to hull, machinery or equipment, grounding, detention by the arrest of the Vessel, (unless such arrest is caused by events for which the Charterers, their servants, agents or subcontractors are responsible), or detention by average accidents to the Vessel or cargo unless resulting from inherent vice, quality or defect of the cargo, drydocking for the purpose of examination or painting bottom, or by any other similar cause preventing the full working of the Vessel, the payment of

hire and overtime, if any, shall cease for the time thereby lost. Should the Vessel deviate or put back during a voyage, contrary to the orders or directions of the Charterers, for any reason other than accident to the cargo or where permitted in lines 257 to 258 hereunder, the hire is to be suspended from the time of her deviating or putting back until she is again in the same or equidistant position from the destination and the voyage resumed therefrom. All bunkers used by the Vessel while off hire shall be for the Owners' account. In the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbors or to rivers or ports with bars, any detention of the Vessel and/or expenses resulting from such detention shall be for the Charterers' account. If upon the voyage the speed be reduced by defect in, or breakdown of, any part of her hull, machinery or equipment, the time so lost, and the cost of any extra bunkers consumed in consequence thereof, and all extra proven expenses may be deducted from the hire.

18. **Sublet** 237

Unless otherwise agreed, the Charterers shall have the liberty to sublet the Vessel for all or any part of the time covered by this Charter Party, but the Charterers remain responsible for the fulfillment of this Charter Party. 238  
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19. **Drydocking** 241

The Vessel was last drydocked 242

\*(a) The Owners shall have the option to place the Vessel in drydock during the currency of this Charter at a convenient time and place, to be mutually agreed upon between the Owners and the Charterers, for bottom cleaning and painting and/or repair as required by class or dictated by circumstances. 243  
244  
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\*(b) Except in case of emergency no drydocking shall take place during the currency of this Charter Party. 246  
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*\* Delete as appropriate* 248

20. **Total Loss** 249

Should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once. 250  
251

21. **Exceptions** 252

The act of God, enemies, fire, restraint of princes, rulers and people, and all dangers and accidents of the seas, rivers, machinery, boilers, and navigation, and errors of navigation throughout this Charter, always mutually excepted. 253  
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22. **Liberties** 256

The Vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property. 257  
258

23. **Liens** 259

The Owners shall have a lien upon all cargoes and all sub-freights and/or sub-hire for any amounts due under this Charter Party, including general average contributions, and the Charterers shall have a lien on the Vessel for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once. 260  
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The Charterers will not directly or indirectly suffer, nor permit to be continued, any lien or encumbrance, which might have priority over the title and interest of the Owners in the Vessel. The Charterers undertake that during the period of this Charter Party, they will not procure any supplies or necessaries or services, including any port expenses and bunkers, on the credit of the Owners or in the Owners' time. 264  
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<b>24. <u>Salvage</u></b>	268
All derelicts and salvage shall be for the Owners' and the Charterers' equal benefit after deducting Owners' and Charterers' expenses and crew's proportion.	269 270
<b>25. <u>General Average</u></b>	271
General average shall be adjusted according to York-Antwerp Rules 1974, as amended 1990, or any subsequent modification thereof, in currency.	272 273 274
The Charterers shall procure that all bills of lading issued during the currency of the Charter Party will contain a provision to the effect that general average shall be adjusted according to York-Antwerp Rules 1974, as amended 1990, or any subsequent modification thereof and will include the "New Jason Clause" as per Clause 31.	275 276 277 278
Time charter hire shall not contribute to general average.	279
<b>26. <u>Navigation</u></b>	280
Nothing herein stated is to be construed as a demise of the Vessel to the Time Charterers. The Owners shall remain responsible for the navigation of the Vessel, acts of pilots and tug boats, insurance, crew, and all other matters, same as when trading for their own account.	281 282 283
<b>27. <u>Cargo Claims</u></b>	284
Cargo claims as between the Owners and the Charterers shall be settled in accordance with the Inter-Club New York Produce Exchange Agreement of February 1970, as amended May, 1984, or any subsequent modification or replacement thereof.	285 286 287
<b>28. <u>Cargo Gear and Lights</u></b>	288
The Owners shall maintain the cargo handling gear of the Vessel which is as follows:	289 290 291 292
providing gear (for all derricks or cranes) capable of lifting capacity as described. The Owners shall also provide on the Vessel for night work lights as on board, but all additional lights over those on board shall be at the Charterers' expense. The Charterers shall have the use of any gear on board the Vessel. If required by the Charterers, the Vessel shall work night and day and all cargo handling gear shall be at the Charterers' disposal during loading and discharging. In the event of disabled cargo handling gear, or insufficient power to operate the same, the Vessel is to be considered to be off hire to the extent that time is actually lost to the Charterers and the Owners to pay stevedore stand-by charges occasioned thereby, unless such disablement or insufficiency of power is caused by the Charterers' stevedores. If required by the Charterers, the Owners shall bear the cost of hiring shore gear in lieu thereof, in which case the Vessel shall remain on hire.	293 294 295 296 297 298 299 300 301 302
<b>29. <u>Crew Overtime</u></b>	303
In lieu of any overtime payments to officers and crew for work ordered by the Charterers or their agents, the Charterers shall pay the Owners, concurrently with the hire or pro rata.	304 305 306
<b>30. <u>Bills of Lading</u></b>	307
(a) The Master shall sign the bills of lading or waybills for cargo as presented in conformity with mates or tally clerk's receipts. However, the Charterers may sign bills of lading or waybills on behalf of the Master, with the Owner's prior written authority, always in conformity with mates or tally clerk's receipts.	308 309 310



(b) All bills of lading or waybills shall be without prejudice to this Charter Party and the Charterers shall indemnify the Owners against all consequences or liabilities which may arise from any inconsistency between this Charter Party and any bills of lading or waybills signed by the Charterers or by the Master at their request.

(c) Bills of lading covering deck cargo shall be claused: "Shipped on deck at Charterers', Shippers' and Receivers' risk, expense and responsibility, without liability on the part of the Vessel, or her Owners for any loss, damage, expense or delay howsoever caused."

31. **Protective Clauses**

This Charter Party is subject to the following clauses all of which are also to be included in all bills of lading or waybills issued hereunder:

(a) **CLAUSE PARAMOUNT**  
"This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, the Hague Rules, or the Hague-Visby Rules, as applicable, or such other similar national legislation as may mandatorily apply by virtue of origin or destination of the bills of lading, which shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said applicable Act. If any term of this bill of lading be repugnant to said applicable Act to any extent, such term shall be void to that extent, but no further."

and

(b) **BOTH-TO-BLAME COLLISION CLAUSE**  
"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier."

The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact."

and

(c) **NEW JASON CLAUSE**  
"In the event of accident, danger, damage or disaster before or after the commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods."

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery."

and

(d) **U.S. TRADE - DRUG CLAUSE**  
"In pursuance of the provisions of the U.S. Anti Drug Abuse Act 1986 or any re-enactment thereof, the Charterers warrant to exercise the highest degree of care and diligence in preventing unmanifested narcotic drugs and marijuana to be loaded or concealed on board the Vessel."

Non-compliance with the provisions of this clause shall amount to breach of warranty for consequences 358  
of which the Charterers shall be liable and shall hold the Owners, the Master and the crew of the Vessel 359  
harmless and shall keep them indemnified against all claims whatsoever which may arise and be made 360  
against them individually or jointly. Furthermore, all time lost and all expenses incurred, including fines, 361  
as a result of the Charterers' breach of the provisions of this clause shall be for the Charterer's account 362  
and the Vessel shall remain on hire. 363

Should the Vessel be arrested as a result of the Charterers' non-compliance with the provisions of this 364  
clause, the Charterers shall at their expense take all reasonable steps to secure that within a reasonable 365  
time the Vessel is released and at their expense put up the bails to secure release of the Vessel. 366

The Owners shall remain responsible for all time lost and all expenses incurred, including fines, in the 367  
event that unmanifested narcotic drugs and marijuana are found in the possession or effects of the 368  
Vessel's personnel." 369

and 370

(e) WAR CLAUSES 371

"(i) No contraband of war shall be shipped. The Vessel shall not be required, without the consent of the 372  
Owners, which shall not be unreasonably withheld, to enter any port or zone which is involved in a state 373  
of war, warlike operations, or hostilities, civil strife, insurrection or piracy whether there be a declaration 374  
of war or not, where the Vessel, cargo or crew might reasonably be expected to be subject to capture, 375  
seizure or arrest, or to a hostile act by a belligerent power (the term "power" meaning any de jure or de 376  
facto authority or any purported governmental organization maintaining naval, military or air forces). 377

(ii) If such consent is given by the Owners, the Charterers will pay the provable additional cost of insuring 378  
the Vessel against hull war risks in an amount equal to the value under her ordinary hull policy but not 379  
exceeding a valuation of In addition, the Owners may purchase and the 380  
Charterers will pay for war risk insurance on ancillary risks such as loss of hire, freight disbursements, 381  
total loss, blocking and trapping, etc. If such insurance is not obtainable commercially or through a 382  
government program, the Vessel shall not be required to enter or remain at any such port or zone. 383

(iii) In the event of the existence of the conditions described in (i) subsequent to the date of this Charter, 384  
or while the Vessel is on hire under this Charter, the Charterers shall, in respect of voyages to any such 385  
port or zone assume the provable additional cost of wages and insurance properly incurred in connection 386  
with master, officers and crew as a consequence of such war, warlike operations or hostilities. 387

(iv) Any war bonus to officers and crew due to the Vessel's trading or cargo carried shall be for the 388  
Charterers' account." 389

32. **War Cancellation** 390

In the event of the outbreak of war (whether there be a declaration of war or not) between any two or 391  
more of the following countries: 392

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either the Owners or the Charterers may cancel this Charter Party. Whereupon, the Charterers shall 396  
redeliver the Vessel to the Owners in accordance with Clause 10; if she has cargo on board, after 397  
discharge thereof at destination, or, if debarred under this Clause from reaching or entering it, at a near 398  
open and safe port as directed by the Owners; or, if she has no cargo on board, at the port at which she 399  
then is; or, if at sea, at a near open and safe port as directed by the Owners. In all cases hire shall 400  
continue to be paid in accordance with Clause 11 and except as aforesaid all other provisions of this 401  
Charter Party shall apply until redelivery. 402

33. **Ice** 403

The Vessel shall not be required to enter or remain in any icebound port or area, nor any port or area 404

where lights or lightships have been or are about to be withdrawn by reason of ice, nor where there is risk that in the ordinary course of things the Vessel will not be able on account of ice to safely enter and remain in the port or area or to get out after having completed loading or discharging. Subject to the Owners' prior approval the Vessel is to follow ice-breakers when reasonably required with regard to her size, construction and ice class.

**34. Requisition**

Should the Vessel be requisitioned by the government of the Vessel's flag during the period of this Charter Party, the Vessel shall be deemed to be off hire during the period of such requisition, and any hire paid by the said government in respect of such requisition period shall be retained by the Owners. The period during which the Vessel is on requisition to the said government shall count as part of the period provided for in this Charter Party.  
If the period of requisition exceeds months, either party shall have the option of cancelling this Charter Party and no consequential claim may be made by either party.

**35. Stevedore Damage**

Notwithstanding anything contained herein to the contrary, the Charterers shall pay for any and all damage to the Vessel caused by stevedores provided the Master has notified the Charterers and/or their agents in writing as soon as practical but not later than 48 hours after any damage is discovered. Such notice to specify the damage in detail and to invite Charterers to appoint a surveyor to assess the extent of such damage.

(a) In case of any and all damage(s) affecting the Vessel's seaworthiness and/or the safety of the crew and/or affecting the trading capabilities of the Vessel, the Charterers shall immediately arrange for repairs of such damage(s) at their expense and the Vessel is to remain on hire until such repairs are completed and if required passed by the Vessel's classification society.

(b) Any and all damage(s) not described under point (a) above shall be repaired at the Charterers' option, before or after redelivery concurrently with the Owners' work. In such case no hire and/or expenses will be paid to the Owners except and insofar as the time and/or the expenses required for the repairs for which the Charterers are responsible, exceed the time and/or expenses necessary to carry out the Owners' work.

**36. Cleaning of Holds**

The Charterers shall provide and pay extra for sweeping and/or washing and/or cleaning of holds between voyages and/or between cargoes provided such work can be undertaken by the crew and is permitted by local regulations, at the rate of per hold.

In connection with any such operation, the Owners shall not be responsible if the Vessel's holds are not accepted or passed by the port or any other authority. The Charterers shall have the option to re-deliver the Vessel with unclean/upswept holds against a lumpsum payment of in lieu of cleaning.

**37. Taxes**

Charterers to pay all local, State, National taxes and/or dues assessed on the Vessel or the Owners resulting from the Charterers' orders herein, whether assessed during or after the currency of this Charter Party including any taxes and/or dues on cargo and/or freights and/or sub-freights and/or hire (excluding taxes levied by the country of the flag of the Vessel or the Owners).

**38. Charterers' Colors**

The Charterers shall have the privilege of flying their own house flag and painting the Vessel with their own markings. The Vessel shall be repainted in the Owners' colors before termination of the Charter Party. Cost and time of painting, maintaining and repainting those changes effected by the Charterers shall be for the Charterers' account.

<b>39. <u>Laid up Returns</u></b>	450
The Charterers shall have the benefit of any return insurance premium receivable by the Owners from their underwriters as and when received from underwriters by reason of the Vessel being in port for a minimum period of 30 days if on full hire for this period or pro rata for the time actually on hire.	451 452 453
<b>40. <u>Documentation</u></b>	454
The Owners shall provide any documentation relating to the Vessel that may be required to permit the Vessel to trade within the agreed trade limits, including, but not limited to certificates of financial responsibility for oil pollution, provided such oil pollution certificates are obtainable from the Owners' P & I club, valid international tonnage certificate, Suez and Panama tonnage certificates, valid certificate of registry and certificates relating to the strength and/or serviceability of the Vessel's gear.	455 456 457 458 459
<b>41. <u>Stowaways</u></b>	460
(a) (i) The Charterers warrant to exercise due care and diligence in preventing stowaways in gaining access to the Vessel by means of secreting away in the goods and/or containers shipped by the Charterers.	461 462 463
(ii) If, despite the exercise of due care and diligence by the Charterers, stowaways have gained access to the Vessel by means of secreting away in the goods and/or containers shipped by the Charterers, this shall amount to breach of charter for the consequences of which the Charterers shall be liable and shall hold the Owners harmless and shall keep them indemnified against all claims whatsoever which may arise and be made against them. Furthermore, all time lost and all expenses whatsoever and howsoever incurred, including fines, shall be for the Charterers' account and the Vessel shall remain on hire.	464 465 466 467 468 469 470
(iii) Should the Vessel be arrested as a result of the Charterers' breach of charter according to sub-clause (a)(ii) above, the Charterers shall take all reasonable steps to secure that, within a reasonable time, the Vessel is released and at their expense put up bail to secure release of the Vessel.	471 472 473 474
(b) (i) If, despite the exercise of due care and diligence by the Owners, stowaways have gained access to the Vessel by means other than secreting away in the goods and/or containers shipped by the Charterers, all time lost and all expenses whatsoever and howsoever incurred, including fines, shall be for the Owners' account and the Vessel shall be off hire.	475 476 477 478
(ii) Should the Vessel be arrested as a result of stowaways having gained access to the Vessel by means other than secreting away in the goods and/or containers shipped by the Charterers, the Owners shall take all reasonable steps to secure that, within a reasonable time, the Vessel is released and at their expense put up bail to secure release of the Vessel.	479 480 481 482
<b>42. <u>Smuggling</u></b>	483
In the event of smuggling by the Master, Officers and/or crew, the Owners shall bear the cost of any fines, taxes, or imposts levied and the Vessel shall be off hire for any time lost as a result thereof.	484 485
<b>43. <u>Commissions</u></b>	486
A commission of _____ percent is payable by the Vessel and the Owners to _____	487 488 489 490
on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.	491
<b>44. <u>Address Commission</u></b>	492
An address commission of _____ percent is payable to _____	493

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on hire earned and paid under this Charter.	496
<b>45. Arbitration</b>	497
(a) NEW YORK	498
All disputes arising out of this contract shall be arbitrated at New York in the following manner, and subject to U.S. Law:	499
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One Arbitrator is to be appointed by each of the parties hereto and a third by the two so chosen. Their decision or that of any two of them shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the court. The Arbitrators shall be commercial men, conversant with shipping matters. Such Arbitration is to be conducted in accordance with the rules of the Society of Maritime Arbitrators Inc.	501
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For disputes where the total amount claimed by either party does not exceed US \$	** 506
the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators Inc.	507
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(b) LONDON	509
All disputes arising out of this contract shall be arbitrated at London and, unless the parties agree forthwith on a single Arbitrator, be referred to the final arbitrament of two Arbitrators carrying on business in London who shall be members of the Baltic Mercantile & Shipping Exchange and engaged in Shipping, one to be appointed by each of the parties, with power to such Arbitrators to appoint an Umpire. No award shall be questioned or invalidated on the ground that any of the Arbitrators is not qualified as above, unless objection to his action be taken before the award is made. Any dispute arising hereunder shall be governed by English Law.	510
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For disputes where the total amount claimed by either party does not exceed US \$	** 517
the arbitration shall be conducted in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association.	518
	519
<i>*Delete para (a) or (b) as appropriate</i>	520
<i>** Where no figure is supplied in the blank space this provision only shall be void but the other provisions of this clause shall have full force and remain in effect.</i>	521
	522
If mutually agreed, clauses _____ to _____, both inclusive, as attached hereto are fully incorporated in this Charter Party.	523
	524

**APPENDIX "A"** 525

To Charter Party dated	526
Between	527
and	528
	529
<b>Further details of the Vessel:</b>	530
	530

CODE WORD FOR THIS CHARTER PARTY  
STB TIME

\_\_\_\_\_  
Vessel Name

# TANKER TIME CHARTER PARTY

\_\_\_\_\_  
Place

\_\_\_\_\_  
Date



III. Segregated Ballast Pumps	63
a. Number _____	64
b. Design capacity each pump _____ US Bbls/Hr.	65
D. Cargo Loading/Discharge Manifold	66
The whole manifold is made of steel or comparable material and is strengthened and supported to avoid damage from loading and discharge equipment and to withstand a maximum load from any direction equivalent to the safe working load of the cargo hose lifting equipment.	67 68 69
I. a. Number of manifold connections _____	70
b. Diameter of manifold connections _____	71
c. Distance from centers of manifold connections _____	72
d. Distance from manifold connections to ship's side _____	73
e. Distance center of manifold connections to deck _____	74
f. Distance bow/center of manifold _____	75
g. Safe working load of cargo hose lifting equipment _____ tons.	76
II. Cargo Manifold Reducing Pieces	77
Vessels from 16 to 60 MDWT <sub>0</sub> are equipped with a sufficient number of cargo manifold reducing pieces of steel or a comparable material to permit presenting of flanges of 8", 10" and 12" (ASA) cargo hoses/arms at all manifold connections on one side of the vessel.	78 79 80
Vessels over 60 MDWT are equipped with a sufficient number of cargo manifold reducing pieces of steel or a comparable material to permit presenting of flanges of 10", 12" and 16" (ASA) cargo hose/arms at all manifold connections on one side of the vessel.	81 82 83
E. Heating Coils	84
I. Type of coils and material of which manufactured _____	85
II. Ratio heating surface/volume	86
a. Center Tanks	Ft. <sup>2</sup> /40 Ft. <sup>3</sup> 87
b. Wing Tanks	Ft. <sup>2</sup> /40 Ft. <sup>3</sup> 88
F. Cargo Loading/Performance	89
Vessel can load homogeneous cargo at maximum rate of _____ B/H.	90
G. Vessel Particulars	91
I. Length overall _____ ft. _____ in.	92
II. Fully loaded summer draft in salt water of a density of 1.025	93
_____ ft. _____ inches on an assigned freeboard of _____	94
III. Fresh Water allowance _____ in.	95
IV. Light ship draft	96
Forward _____ Ft. _____ in.	
Aft _____ Ft. _____ in.	97
Mean _____ Ft. _____ in.	98
V. Moulded Depth _____	99
VI. Light ship freeboard _____ Ft. _____ in.	100
VII. TPI on light ship draft _____	101
VIII. TPI on summer draft _____	102
IX. Extreme beam _____	103
X. Gross Reg. Tons _____	104
XI. Net Reg. Tons _____	105
XII. Suez Canal Tonnage _____	106
XIII. Panama Canal Tonnage _____	107
XIV. Flag of Registry _____	108
XV. Call letters _____	109
XVI. Classification Society _____	110
XVII. Maximum bunkers aboard when vessel is placed at Charterer's disposal to be _____	111 112
XVIII. Owner shall provide Charterer with copies of the Vessel's plans upon Charterer's request therefor, provided, in the case of a newbuilding, that Owner need not provide same until such plans are available to him from the building yard.	113 114 115
XIX. Vessel is equipped with a fresh water evaporator which will be maintained in good operating condition. Owners warrant that this evaporator is capable of making sufficient fresh water to supply the vessel's needs.	116 117 118
XX. Owner warrants vessel is capable of heating cargo to 135° F. and of maintaining same throughout entire discharge. Should vessel fail to heat cargo in accordance with Charterer's instructions, Charterer shall have the option to:	119 120 121
a) Delay discharge of the cargo	122
b) Delay berthing of the Vessel	123



	c) Discontinue discharge and remove vessel from berth until cargo is heated in accordance with Charterer's instructions.	124 125
	All time lost to be considered as off-hire and for Owner's account. In addition, any expenses incurred in moving vessel from berth will be for Owner's account.	126 127
HIRE	3. (a) The Charterer shall pay hire for the use of the Vessel at the rate of _____ in _____ currency per ton (of 2,240 lbs.) on Vessel's deadweight as shown in Clause 2. A, per calendar month, payment to be made in advance monthly at _____ by check without discount commencing with the date and hour the Vessel is placed at Charterer's disposal hereunder and continuing to the date and hour when the Vessel is released to Owner at the expiration of this Charter except as otherwise expressed in this Charter. Any hire paid in advance and not earned shall be returned to the Charterer at once. In no event will initial payment of hire be made until Charter Party is signed and Vessel placed at Charterer's disposal as herein provided.	128 129 130 131 132 133 134 135 136
DEDUCTIONS	(b) The Charterer shall be entitled to deduct from hire payments: (1) any disbursements for Owner's account and any advances to the Master or Owner's agents, including commissions thereon, (2) layup savings calculated in accordance with Clause 17, (3) any previous overpayments of hire including offhire and including any overpayments of hire concerning which a bona fide dispute may exist but in the latter event the Charterer shall furnish an adequate bank guarantee or other good and sufficient security on request of the Owner, (4) any Clause 8 and 9 claims, and (5) any other sums to which Charterer is entitled under this charter. The Charterer shall be entitled to 2½% commission on any sums advanced or disbursements made for the Owner's account. However, the Owner shall have the option of making advances to the Charterer or its designated agent for disbursements (provided such advances are deemed adequate and reasonable by the Charterer), and, in such event, no commissions shall be paid.	137 138 139 140 141 142 143 144 145 146 147
FINAL VOYAGE	(c) Should the Vessel be on her final voyage at the time a payment of hire becomes due, said payment shall be made for the time estimated by Charterer to be necessary to complete the voyage and effect release of the Vessel to Owner, less all deductions provided for in sub-paragraph (b) of this Clause which shall be estimated by Charterer if the actual amounts have not been received and also less the amount estimated by Charterer to become payable by the Owner for fuel and water on release as provided in Clause 19. (b). Upon redelivery any difference between the estimated and actual amounts shall be refunded to or paid by the Charterer as the case may require.	148 149 150 151 152 153 154
LOSS OF VESSEL	(d) Should the Vessel be lost or be missing and presumed lost, hire shall cease at the time of her loss or, if such time is unknown, at the time when the Vessel was last heard of. If the Vessel should become a constructive total loss, hire shall cease at the time of the casualty resulting in such loss. In either case, any hire paid in advance and not earned shall be returned to the Charterer. If the Vessel should be off hire or missing when a payment of hire would otherwise be due, such payment shall be postponed until the off-hire period ceases or the safety of the Vessel is ascertained, as the case may be.	155 156 157 158 159 160 161
REDUCTION IN HIRE	(e) If the Vessel shall not fulfill the Owner's Warranty or any other part of her description as warranted in Clause 4, Charterer shall be entitled without prejudice to a reduction in the hire to correct for the deficiency and to any other rights the Charterer may have.	162 163 164
DEFAULT	(f) In default of punctual and regular payment as herein specified, the Owner will notify _____ at _____ whereupon the Charterer shall make payment of the amount due within ten (10) days of receipt of notification from the Owner, failing which the Owner will have the right to withdraw the Vessel from the service of the Charterer without prejudice to any claim the Owner may otherwise have against the Charterer under this Charter.	165 166 167 168 169 170
INCREMENT	(g) The rate of hire set forth in sub-paragraph (a) of this Clause includes an increment of \$ _____ to cover in full any expenses for Charterer's account for extra victualling by the Master, telephone calls, radio messages, telegrams and cables and all overtime worked by the Vessel's officers and crew at Charterer's request.	171 172 173 174
	(h) The rate of charter hire set forth in this Clause 3 is equivalent to \$ _____ per hour.	175 176
WARRANTIES	4. Owner warrants that at the time the Vessel is placed at Charterer's disposal, the Vessel shall fulfill the descriptions, particulars and capabilities set forth in Clause 2 above, and shall be tight, staunch, and strong, in thoroughly efficient order and condition and in every way fit, manned, equipped, and supplied for the service contemplated, with holds, cargo tanks, pipelines, and valves clear, clean, and tight and with pumps, heating coils, and all other equipment in good working order. Such description, particulars, and capabilities of the Vessel shall be maintained by Owner throughout the period of the Vessel's service hereunder so far as possible by the exercise of due diligence.	177 178 179 180 181 182 183
HIRE	5. (a) The use and services of the Vessel shall be placed at the disposal of the Charterer at _____ (hereinafter "Port of Delivery") at such readily accessible dock, wharf, or other place as the Charterer may direct. Charter hire shall commence when the Vessel is at such dock, wharf, or place and in all respects ready to perform this Charter and ready for sea and written notice thereof has been given by the Master to the Charterer or its Agents at the Port of Delivery.	184 185 186 187 188 189
LAYDAYS	(b) Hire shall not commence before _____, except with Charterer's consent, and the Vessel shall be placed at Charterer's disposal in accordance with the provisions hereof no later than _____ in default of which Charterer shall have the option to cancel this Charter declarable not later than the day of the Vessel's readiness. Cancellation by Charterer or acceptance of the use of the Vessel's services shall be without prejudice to any claims for damages Charterer may have for late tender of the Vessel's services.	190 191 192 193 194 195 196

USE OF VESSEL	(c) The whole reach and burthen of the Vessel (but not more than she can reasonably stow and safely carry) shall be at the Charterer's disposal, reserving proper and sufficient space for Vessel's Officers, Crew, Master's cabin, tackle, apparel, furniture, fuel, provisions, and stores.	197 198 199
TRADING LIMITS	6. (a) The Vessel may be employed in any part of the World trading between and at ports, places, berths, docks, anchorages, and submarine pipe-lines in such lawful trades as the Charterer or its agents may direct, subject to Institute Warranties and Clauses attached hereto but may be sent to ports and places on the North American Lakes, the St. Lawrence River and tributaries between May 15 and November 15 and through the Straits of Magellan and around Cape Horn and The Cape of Good Hope at any time of the year without payment of any extra premium. Notwithstanding the foregoing restrictions, the Vessel may be sent to Baltic Sea ports not North of Stockholm, and to Helsingfors and Abo, Finland, and other ports and places as set forth in the Institute Warranties and Clauses, provided, however, that Charterer shall reimburse Owner for any additional premia properly assessed by Vessel's underwriters and payable by Owner for breach of such trade warranties.	200 201 202 203 204 205 206 207 208 209
BERTHS	(b) The Vessel shall be loaded, discharged, or lightened, at any port, place, berth, dock, anchorage, or submarine line or alongside lighters or lightening vessels as Charterer may direct. Notwithstanding anything contained in this Clause or any other provisions of this Charter, Charterer shall not be deemed to warrant the safety of any port, berth, dock, anchorage, and/or submarine line and shall not be liable for any loss, damage, injury, or delay resulting from conditions at such ports, berths, docks, anchorages, and submarine lines not caused by Charterer's fault or neglect or which could have been avoided by the exercise of reasonable care on the part of the Master or Owner.	210 211 212 213 214 215 216
FUEL	(c) The Charterer shall accept and pay for all fuel in the Vessel's bunkers at the time the vessel is placed at Charterer's disposal not exceeding the maximum quantity stated in Clause 2 above. Any excess quantity shall be removed by the Owner at its expense before such time unless the Charterer elects to accept such excess at the price determined as hereinafter provided or at such other price as may be mutually agreed. Payment for such fuel shall be in accordance with The Esso International Contract Price List current for the date when and the port or place where the vessel is placed at Charterer's disposal under the Charter or the nearest port to which such list applies.	217 218 219 220 221 222 223
CARGO	7. The Charterer shall have the option of shipping any lawful dry cargo in bulk for which the Vessel and her tanks are suitable and any lawful merchandise in cases and/or cans and/or other packages in the Vessel's forehold, tween decks, and/or other suitable space available, subject, however, to the Master's approval as to kind and character, amount and stowage. All charges for dunnage, loading, stowing, and discharging so incurred shall be paid by the Charterer.	224 225 226 227 228
SPEED, FUEL AND PUMPING WARRANTIES	8. The Owner warrants that the Vessel is capable of maintaining and shall maintain throughout the period of this Charter Party on all sea passages from Seabuooy to Seabuooy a guaranteed average speed under all weather conditions of _____ knots in a laden condition and _____ knots in ballast (speed will be determined by taking the total miles at sea divided by the total hours at sea as shown in the log books excluding stops at sea and any sea passage covered by an off-hire calculation) on a guaranteed daily consumption of _____ tons (of 2,240 lbs.) of Diesel/Bunker C/High Viscosity Fuel Oil maximum _____ seconds Redwood No. 1 at 100 degrees F. for main engine, and _____ tons (of 2,240 lbs.) of Diesel for auxiliaries for propulsion. For each day that heat is applied to cargo the guaranteed daily consumption is _____ bbls. of Diesel/Bunker C/High Viscosity Fuel Oil maximum _____ seconds Redwood No. 1 at 100 degrees F. per tank day. For each hour that tank cleaning is required, the guaranteed consumption is _____ bbls. of Diesel/Bunker C/High Viscosity Fuel Oil maximum _____ seconds Redwood No. 1 at 100 degrees F. per machine hour.	229 230 231 232 233 234 235 236 237 238 239 240 241 242
	The Charterer is entitled to the full capabilities of the Vessel and the Owner warrants that the Vessel is capable of discharging a cargo of petroleum at the following minimum rates:	243 244
	Light petroleum (viscosity less than 320 SSU at 100° F.) _____ bbls/hr	245
	Medium petroleum (viscosity of 320 to 3200 SSU at 100° F.) _____ bbls/hr	246
	Heavy petroleum (viscosity above 3200 SSU at 100° F.) _____ bbls/hr or of maintaining a pressure of 100 PSI at ship's rail should the foregoing minimum rates not be met.	247 248
	Charterer is to be compensated at \$ _____ per hour or pro rata for each part of an hour that Vessel takes in excess of the pumping rates as stipulated above. The owner understands and agrees that he will receive no credit or compensation if the Vessel is able to discharge at a rate greater than those specified above. Any delay to Vessel's discharge caused by shore conditions shall be taken into account in the assessment of pumping performance. Pumping performance shall be reviewed in accordance with Clause 9.	249 250 251 252 253 254
ADJUSTMENT OF HIRE	9. (a) The speed and consumption guaranteed by the Owner in Clause 8 will be reviewed by the Charterer after three calendar months counting from the time of delivery of the Vessel to the Charterer in accordance with this Charter Party and thereafter at the end of each three (3) calendar month period. If at the end of each twelve (12) calendar month period (or at any time during the term of this charter) it is found that the Vessel has failed to maintain as an average during the preceding twelve (12) calendar month period (or for any other twelve month period during the term of this Charter) the speed and/or consumption warranted, the Charterer shall be retroactively compensated in respect of such failings as follows:	255 256 257 258 259 260 261 262
	(b) Speed - Payment to Charterer of \$ _____ per hour or pro rata for each part of an hour that Vessel steams in excess of the equivalent time Vessel would have taken at the guaranteed speed warranted in Clause 8 as calculated in accordance with Attachment 1 - "Performance Calculations".	263 264 265 266
	(c) Consumption - the Owner to reimburse the Charterer for each ton of 2,240 lbs. or pro rata for part of a ton in excess of the guaranteed daily consumption for main engine and/or auxiliaries and/or heating and/or tank cleaning including any excess not borne by the Owner in accordance with the off hire clause of this Charter Party at the average price for the particular grade of oil as set forth in the then current Esso International Contract Price List at _____ for	267 268 269 270 271

the total period under review provided that Vessel's actual speed is in accordance with Clause 8. To the extent the Vessel's speed is less than that warranted, fuel consumption allowed will be determined in accordance with Attachment 1 - "Performance Calculations".

(d) The basis for determining the Vessel's performance in (a) and (b) above shall be the statistical data supplied by the Master in accordance with Clause 14. (b).

(e) Owner to have similar privileges under this Clause for receiving compensation as Charterers do should Vessel performance as concerns speed be in excess or consumption for propulsion be below the descriptions outlined herein.

(f) The Charterer shall provide Owner with an opportunity to review any claim submitted by Charterer under this Clause, and the Owner shall complete such review, and provide Charterer with the results thereof within 30 days from the date such claim was mailed by Charterer to Owner. Charterer may deduct from hire any amount to which it is entitled under this Clause after the expiration of 40 days from the date of Charterer's mailing of a claim relating thereto to Owner.

In the event of Charterer having a claim in respect of Vessel's performance during the final year or part of the Charter period and any extension thereof, the amount of such claim shall be withheld from hire in accordance with Charterer's estimate made about two months before the end of the Charter period and any necessary adjustment after the end of the Charter shall be made by the Owner to the Charterer or the Charterer to the Owner as the case may require.

LIENS

10. The Owner shall have a lien on all cargoes for all amounts due under this Charter, and the Charterer shall have a lien on the Vessel for all moneys paid in advance and not earned, all disbursements and advances for the Owner's account, for the value of any of Charterer's fuel used or accepted for Owner's account, for all amounts due to Charterer under Clause 9, and other provisions of this Charter and for any damages sustained by the Charterer as a result of breach of this Charter by the Owner.

OFF HIRE

11. (a) In the event of loss of time from breakdown of machinery, interference by authorities, collision, stranding, fire, or other accident or damage to the Vessel, not caused by the fault of the Charterer, preventing the working of the Vessel for more than twelve consecutive hours, or in the event of loss of time from deficiency of men or stores, breach of orders or neglect of duty by the Master, Officers, or Crew, or from deviation for the purpose of landing any injured or ill person on board other than any person who may be carried at Charterer's request, payment of hire shall cease for all time lost until the Vessel is again in an efficient state to resume her service and has regained a point of progress equivalent to that when the hire ceased hereunder; cost of fuel consumed while Vessel is off hire hereunder, as well as all port charges, pilotages, and other expenses incurred during such period and consequent upon the putting in to any port or place other than to which the Vessel is bound, shall be borne by the Owner; but should the Vessel be driven into port or to anchorage by stress of weather or on account of accident to her cargo, such loss of time, shall be for Charterer's account. If upon the voyage the speed of the Vessel be reduced or her fuel consumption increased by breakdown, casualty, or inefficiency of Master, Officers, or Crew, so as to cause a delay of more than twenty-four hours in arriving at the Vessel's next port or an excess consumption of more than one day's fuel, hire for the time lost and cost of extra fuel consumed, if any, shall be borne by the Owner. Any delay by ice or time spent in quarantine shall be for Charterer's account, except delay in quarantine resulting from the Master, Officers, or Crew having communications with the shore at an infected port, where the Charterer has given the Master adequate written notice of infection, which shall be for Owner's account, as shall also be any loss of time through detention by authorities as a result of charges of smuggling or of other infraction of law by the Master, Officers, or Crew.

(b) If the periods of time lost for which hire does not cease to be payable under the foregoing provisions of this Clause because each such period or delay is not of more than twelve (12) hours duration exceed in the aggregate one hundred and forty-four (144) hours in any charter party year (and pro rata for part of a year), hire shall not be payable for the excess and any hire overpaid by the Charterer shall be repaid by the Owner.

(c) In the event of loss of time by detention of the Vessel by authorities at any place in consequence of legal proceeding against the Vessel or the Owner, payment of charter hire shall cease for all time so lost. Cost of fuel and water consumed as well as all additional port charges, pilotages, and other expenses incurred during the time so lost shall be borne by the Owner. If any such loss of time shall exceed thirty consecutive days, the Charterer shall have the option to cancel this Charter by written notice given to the Owner while the vessel remains so detained without prejudice to any other right Charterer may have in the premises.

DRYDOCKING

12. (a) Owner, at its expense, shall drydock, clean, and paint Vessel's bottom and make all overhaul and other necessary repairs at reasonable intervals not to exceed twenty-four (24) months for which purpose Charterer shall allow Vessel to proceed to an appropriate port. Owner shall be solely responsible therefor, and also for gasfreeing the Vessel, upon each occasion. All towing, pilotage, fuel, water and other expenses incurred while proceeding to and from and while in drydock, shall also be for Owner's account. Fuel used during such drydocking or repair as provided in this Clause or Clause 15 or in proceeding to or from the port of drydocking or repair, will be charged to Owner by Charterer at the price charged to Charterer by its bunker supplier at such port if bunkers are obtained there or at the next replenishment port.

(b) In case of drydocking pursuant to this Clause at a port where Vessel is to load, discharge or bunker, under Charterer's orders, hire shall be suspended from the time the Vessel received free pratique on arrival, if in ballast, or upon completion of discharge of cargo, if loaded, until Vessel is again ready for service. In case of drydocking at a port other than where Vessel loads, discharges, or bunkers, under Charterer's orders, the following time and bunkers shall be deducted from hire: total time and bunkers including repair port call for the actual voyage from last port of call under Charterer's orders to next port of call under Charterer's orders, less theoretical voyage time and bunkers for the direct voyage from said last port of call to said next port of call. Theoretical voyage will be calculated on the basis of the seabuoy to seabuoy distance at the warranted speed and consumption per Clause 8.

OWNER PROVIDES

13. The Owner shall provide and pay for all provisions, deck and engine room stores, galley and cabin stores, galley and crew fuel, insurance on the Vessel, wages of the Master, Officers, and Crew, all certificates and other requirements necessary to enable the Vessel to be employed throughout the trading limits herein provided, consular fees pertaining to the Master, Officers, and Crew, all fresh water used by the Vessel and all other expenses connected with the operation, maintenance, and navigation of the Vessel.

MASTER'S DUTIES

14. (a) The Master, although appointed by and in the employ of the Owner and subject to Owner's direction and control, shall observe the orders of Charterer in connection with Charterer's agencies, arrangements, and employment of the Vessel's services hereunder. Nothing in this Clause or elsewhere in this Charter shall be construed as creating a demise of the Vessel to Charterer nor as vesting Charterer with any control over the physical operation or navigation of the Vessel.

(b) The Master and the Engineers shall keep full and correct logs of the voyages, which are to be patent to the Charterer and its agents, and abstracts of which are to be mailed directly to the Charterer from each port of call.

(c) If the Charterer shall have reason to be dissatisfied with the conduct of the Master or Officers, the Owner shall, on receiving particulars of the complaint, investigate it and if necessary, make a change in the appointments.

FUEL, PORT CHARGES, ETC.

15. (a) The Charterer (except during any period when the Vessel is off hire) shall provide and pay for all fuel except for galley and Crew as provided in Clause 13. The Charterer shall also pay for all port charges, light dues, dock dues, Panama and other Canal dues, pilotage, consular fees, (except those pertaining to Master, Officers, and Crew), tugs necessary for assisting the Vessel in, about, and out of port for the purpose of carrying out this Charter, Charterer's agencies and commissions incurred for Charterer's account and crew expense incurred for connecting and disconnecting cargo hoses and arms. The Owner shall, however, reimburse the Charterer for any fuel used or any expenses incurred in making a general average sacrifice or expenditure, and for any fuel consumed during drydocking or repair of the Vessel.

(b) In engaging pilotage and tug assistance, Charterer is authorized by Owner to engage them on behalf of Owner on the usual terms and conditions for such services then prevailing at the ports or places where such services are engaged, including provisions there prevailing, if any, making pilots, tug captains, or other personnel of any tug the borrowed servants of the Owner.

(c) Neither the Charterer nor its agents nor any of its associated or affiliated companies, nor any of their agents or employees, shall be under any responsibility for any loss, damage, or liability arising from any negligence, incompetence, or incapacity of any pilot, tug captain, or other personnel of any tug, or arising from the terms of the contract of employment thereof or for any unseaworthiness or insufficiency of any tug or tugs, the services of which are arranged by Charterer on behalf of Owner, and Owner agrees to indemnify and hold Charterer, its agents, associated and affiliated companies and their employees harmless from and against any and all such consequences.

(d) Charterer shall have the option of using its own tugs or pilots, or tugs or pilots made available or employed by any associated or affiliated companies, to render towage or pilotage services to the Vessel. In this event, the terms and conditions relating to such services prevailing in the port where such services are rendered and applied by independent tugboat owners or pilots, shall be applicable, and Charterer, its associated or affiliated companies and their pilots shall be entitled to all exemptions from and limitations of liability, applicable to said independent tugboat owners or pilots and their published tariff terms and conditions.

ADDITIONAL EQUIPMENT

16. The Charterer, subject to the Owner's approval not to be unreasonably withheld, shall be at liberty to fit any additional pumps and/or gear for loading or discharging cargo it may require beyond that which is on board at the commencement of the Charter, and to make the necessary connections with steam or water pipes, such work to be done at its expense and time, and such pumps and/or gear so fitted to be considered its property, and the Charterer shall be at liberty to remove it at its expense and time during or at the expiry of this Charter; the Vessel to be left in her original condition to the Owner's satisfaction.

LAY-UP

17. The Charterer shall have the option of laying up the Vessel for all or any portion of the term of this Charter, in which case hire hereunder shall continue to be paid, but there shall be credited against such hire the whole amount which the Owner shall save (or reasonably should save) during such period of layup through reduction in expenses, less any extra expenses to which the Owner is put as a result of such layup.

Should the Charterer, having exercised the option granted hereunder, desire the Vessel again to be put into service, the Owner will, upon receipt of written notice from the Charterer to such effect, immediately take steps to restore the Vessel to service as promptly as possible. The option granted to the Charterer hereunder may be exercised one or more times during the currency of this Charter or any extension thereof.

REQUISITION

18. (a) In the event that title to the Vessel shall be requisitioned or seized by any government authority (or the Vessel shall be seized by any person or government under circumstances which are equivalent to requisition of title), this Charter shall terminate automatically as of the effective date of such requisition or seizure.

(b) In the event that the Vessel should be requisitioned for use or seized by any government authority on any basis not involving, or not equivalent to, requisition of title, she shall be off hire hereunder during the period of such requisition, and any hire or any other compensation paid in respect of such requisition shall be for Owner's account, provided, however, that if such requisition continues for a period in excess of 90 days, the Charterer shall have the option to terminate this Charter upon written notice to the Owner. Any periods of off-hire under this Clause shall be subject to the Charterer's option for off-hire extension set forth in Clause 1 (b) hereof.

REDELIVERY

19. (a) Unless the employment of the Vessel under this Charter shall previously have been terminated by loss of the Vessel or otherwise, the Charterer shall release the Vessel to the Owner's use, free of cargo, at the expiration of the term of this Charter stated in Clause 1 (including any extension thereof provided in said Clause or elsewhere in this Charter), at \_\_\_\_\_

\_\_\_\_\_ (herein called "Port of Redelivery") and shall give written notice of the date and hour of such release. At the Charterer's option, the vessel may be released to the Owner with tanks in a clean or dirty condition.

(b) The Owner shall accept and pay for all fuel in the Vessel's bunkers when this Charter terminates. Payment for such fuel shall be made in accordance with the Esso International Inc. Contract Price List current for the date when and the port or place where the Vessel is redelivered by Charterer to Owners under this Charter, or the nearest port to which such list applies.

BILLS OF LADING

20. (a) Bills of Lading shall be signed by the Master as presented, the Master attending daily, if required, at the offices of the Charterer or its Agents. However, at Charterer's option, the Charterer or its Agents may sign Bills of Lading on behalf of the Master. All Bills of Lading shall be without prejudice to this Charter and the Charterer shall indemnify the Owner against all consequences or

liabilities which may arise from any inconsistency between this Charter and any bills of lading or other documents signed by the Charterer or its Agents or by the Master at their request or which may arise from an irregularity in papers supplied by the Charterer or its Agents.

(b) The carriage of cargo under this Charter Party and under all Bills of Lading issued for the cargo shall be subject to the statutory provisions and other terms set forth or specified in subparagraphs (i) through (vi) of this Clause and such terms shall be incorporated verbatim or be deemed incorporated by the reference in any such Bill of Lading. In such subparagraphs and in any Act referred to therein, the word "carrier" shall include the Owner and the Chartered Owner of the Vessel.

(i) *Clause Paramount.* This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, except that if this Bill of Lading is issued at a place where any other Act, ordinance, or legislation gives statutory effect to the International Convention for the Unification of Certain Rules relating to Bills of Lading at Brussels, August 1924, then this Bill of Lading shall have effect subject to the provisions of such Act, ordinance, or legislation. The applicable Act, ordinance, or legislation (hereinafter called "Act") shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the Owner or Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the Act. If any term of this Bill of Lading be repugnant to the Act to any extent, such term shall be void to that extent but no further.

(ii) *New Jason Clause.* In the event of accident, danger, damage, or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible, by statute, contract or otherwise, the cargo shippers, consignees, or owners of the cargo shall contribute with the Carrier in General Average to the payment of any sacrifices, losses, or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the Carrier or its Agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the Carrier before delivery.

(iii) *General Average.* General Average shall be adjusted, stated, and settled according to York/Antwerp Rules 1950, as amended, and, as to matters not provided for by those rules, according to the laws and usages at the Port of New York. If a General Average statement is required, it shall be prepared at such port by an Adjuster from the Port of New York appointed by the Carrier and approved by the Charterer of the Vessel. Such Adjuster shall attend to the settlement and the collection of the General Average, subject to customary charges. General Average Agreements and/or security shall be furnished by Carrier and/or Charterer of the Vessel, and/or Carrier and/or Consignee of cargo, if requested. Any cash deposit being made as security to pay General Average and/or salvage shall be remitted to the Average Adjuster and shall be held by him at his risk in a special account in a duly authorized and licensed bank at the place where the General Average statement is prepared.

(iv) *Both to Blame.* If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot, or the servants of the Carrier in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder shall indemnify the Carrier against all loss or liability to the other or noncarrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or recovered by the other or noncarrying ship or her owners as part of their claim against the carrying ship or Carrier. The foregoing provisions shall also apply where the owners, operators, or those in charge of any ships or objects other than, or in addition to, the colliding ships or object are at fault in respect of a collision or contract.

(v) *Limitation of Liability.* Any provision of this Charter to the contrary notwithstanding, the Carrier shall have the benefit of all limitations of, and exemptions from, liability accorded to the Owner or Chartered Owner of vessels by any statute or rule of law for the time being.

(vi) *Deviation Clause.* The Vessel shall have liberty to sail with or without pilots, to tow or be towed, to go to the assistance of vessels in distress, to deviate for the purpose of saving life or property or of landing any ill or injured person on board, and to call for fuel at any port or ports in or out of the regular course of the voyage.

21. *War Risks.* (a) No contraband of war shall be shipped, but petroleum and/or its products shall not be deemed contraband of war for the purposes of this Clause. Vessel shall not, however, be required, without the consent of Owner, which shall not be unreasonably withheld, to enter any port or zone which is involved in a state of war, warlike operations, or hostilities, civil strife, insurrection or piracy whether there be a declaration of war or not, where it might reasonably be expected to be subject to capture, seizure or arrest, or to a hostile act by a belligerent power (the term "power" meaning any de jure or de facto authority or any other purported governmental organization maintaining naval, military, or air forces).

(b) For the purposes of this Clause it shall be unreasonable for Owner to withhold consent to any voyage, route, or port of loading or discharge if insurance against all risks defined in Article 21 (a) is then available commercially or under a Government program in respect of such voyage, route or port of loading or discharge. If such consent is given by Owner, Charterer will pay the provable additional cost of insuring Vessel against Hull war risks in an amount equal to the value

under her ordinary hull policy but not exceeding \_\_\_\_\_. In addition, Owner may purchase war risk insurance on ancillary risks such as loss of hire, freight disbursements, total loss, etc., if he carries such insurance for ordinary marine hazards. If such insurance is not obtainable commercially or through a Government program, Vessel shall not be required to enter or remain at any such port or zone.

(c) In the event of the existence of the conditions described in Article 21 (a) subsequent to the date of this Charter, or while vessel is on hire under this Charter, Charterer shall, in respect of voyages to any such port or zone assume the provable additional cost of wages and insurance properly incurred in connection with Master, Officers and Crew as a consequence of such war, warlike operations or hostilities.

EXCEPTIONS

22. (a) The Vessel, her Master and Owner shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage to cargo arising or resulting from: any act, neglect, default or barratry of the Master, Pilots, mariners or other servants of the Owner in the navigation or management of the Vessel; fire, unless caused by the personal design or neglect of the Owner; collision, stranding, or peril, danger or accident of the sea or other navigable waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery. And neither the Vessel, her Master or Owner, nor the Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss or damage or delay or failure in performing hereunder arising or resulting from: act of God; act of war; perils of the seas; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people, or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion.

NUMBER OF GRADES

(b) The Owner warrants the Vessel is constructed and equipped to carry \_\_\_\_\_ grades of oil. If for any reason the Vessel, upon arrival at a loading port, is unable to load the required number of grades, the Charterer will do its utmost to provide a suitable cargo consistent with Vessel's capabilities. However, if this is not possible the Vessel is to proceed to the nearest repair port in ballast and will there repair all bulkhead leaks necessary, any time and expense being for Owner's account.

(c) The exceptions stated in subparagraph (a) of this Clause shall not affect the Owner's undertakings with respect to the condition, particulars and capabilities of the Vessel, or the provisions for payment and cessation of hire or the obligations of the Owner under Clause 20 in respect of the loading, handling, stowage, carriage, custody, care and discharge of cargo.

23. All salvage moneys earned by the Vessel shall be divided equally between the Owner and the Charterer after deducting Master's, Officers' and Crew's share, legal expenses, hire of Vessel during time lost, value of fuel consumed, repairs of damage, if any, and any other extraordinary loss or expense sustained as a result of the service, which shall always be a first charge on such money.

24. Owner warrants that the Vessel is entered in TOVALOP and will remain so entered during the currency of this Charter, provided, however, that if Owner acquires the right to withdraw from TOVALOP under Clause VIII thereof, nothing herein, shall prevent it from exercising that right.

OIL POLLUTION

When an escape or discharge of oil occurs from the Vessel and threatens to cause pollution damage to coastlines, Charterer may, at its option, and upon notice to Owner or Master, undertake such measures as are reasonably necessary to prevent or mitigate such damage, unless Owner promptly undertakes same. Charterer shall keep Owner advised of the nature of the measures intended to be taken by it. Any of the aforementioned measures actually taken by Charterer shall be at Owner's expense (except to the extent that such escape or discharge was caused or contributed to by Charterer), provided that if Owner considers said measures should be discontinued, Owner may so notify Charterer and thereafter Charterer shall have no right to continue said measures under the provisions of this Clause and all further liability to Charterer thereunder shall thereupon cease.

If any dispute shall arise between Owner and Charterer as to the reasonableness of the measures undertaken and/or the expenditure incurred by Charterer hereunder, such dispute shall be referred to arbitration as herein provided.

The provisions of this Clause are not in derogation of such other rights as Charterer or Owner may have under this Charter, or may otherwise have or acquire by law or any International Convention.

CLEAN SEAS

25. The Owner agrees to participate in the Charterer's program covering oil pollution avoidance. Such program aims to prevent the discharge into the sea anywhere in the world of all oil, oil water or ballast, chemicals or oily waste material in any form if the said material is of a persistent nature, except under extreme circumstances whereby the safety of the Vessel, cargo or life would be imperiled.

The Owner agrees to adhere to the oil pollution avoidance instructions provided by the Charterer in the Charterer's Vessel Instruction Manual together with any amendments which may be issued in writing or by radio to cover special cases or changes in International and National Regulations or Laws. The Master will contain on board the Vessel all oily residues from consolidated tank washings, dirty ballast, etc. Such residues shall be contained in one compartment after the separation of all possible water has taken place by safe methods employing the use of settlement and decanting or mechanic separation to approved and recognized standards.

The oily residue will be pumped ashore at the loading or discharge terminal either as segregated oil, dirty ballast, commingling with cargo or as is possible for Charterer to arrange with each cargo.

If the Charterer requires that demulsifiers be used for the separation of oil and water, the cost of such demulsifiers will be at the Charterer's expense.

Owner will also arrange for the Vessel to adhere to Charterer's oil pollution program during off-hire periods within the term of this Charter including the preparing of cargo tanks for drydocking and repairs. In the latter case, the Charterer agrees to bear costs for the disposal of oil residues.

Vessel will take all necessary precautions while loading and discharging cargo or bunkers as well as ballast to ensure that no oil will escape overboard.

Nothing in the Charterer's instructions shall be construed as permission to pollute the sea by the discharge of oil or oily water etc. The Owner agrees to instruct the Master to furnish Charterer with a report covering oil pollution avoidance together with details of the quantity of oil residue on board on arrival at the loading port.

PRODUCTS

26. Owner hereby agrees to receive sales representatives of affiliates of Charterer which market marine products. However, Owner is under no obligation to purchase from said affiliates, and said affiliates are under no obligation to sell to Owner any of such products. Owner designates the following as the appropriate persons or organizations with whom said affiliates should deal:

Name \_\_\_\_\_  
Address \_\_\_\_\_

**CHANGE OF OWNERSHIP**

27. Owner's rights and obligations under this Charter are not transferable by Sale or Assignment without Charterer's consent. In the event of the Vessel being sold without its consent in addition to its other rights, Charterer may, at its absolute discretion, terminate the Charter, whereupon the Owner shall reimburse Charterer for any hire paid in advance and not earned, the cost of bunkers, for any sums to which Charterer is entitled under this Charter, and for any damages which Charterer may sustain.

**ARBITRATION**

28. Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Until such time as the arbitrators finally close the hearings either party shall have the right by written notice served on the arbitrators and on an officer of the other party to specify further disputes or differences under this Charter for hearing and determination. The arbitrators may grant any relief which they, or a majority of them, deem just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance. Awards pursuant to this Clause may include costs, including a reasonable allowance for attorney's fees, and judgment may be entered upon any award made hereunder in any Court having jurisdiction in the premises.

**ASSIGNMENT SUBLET**

29. (a) Charterer, upon notice to Owner, may assign this Charter Party to any of its affiliates.  
(b) Charterer shall also have the right to sublet the Vessel, but in the event of a sublet, Charterer shall always remain responsible for the fulfillment of this Charter in all its terms and conditions.

**LAWS**

30. The interpretation of the Charter and of the rights and obligations of the parties shall be governed by the laws applicable to Charter Parties made in the City of New York. The headings of Clauses are for convenience of reference only and shall not affect the interpretation of this Charter. No modification, waiver or discharge of any term of this Charter shall be valid unless in writing and signed by the party to be charged therewith.

IN WITNESS, WHEREOF, THE PARTIES HAVE CAUSED THIS CHARTER TO BE EXECUTED IN DUPLICATE THE DAY AND YEAR HEREIN FIRST ABOVE WRITTEN.

\_\_\_\_\_  
WITNESS TO SIGNATURE OF

\_\_\_\_\_  
WITNESS TO SIGNATURE OF

# Time Charter Party

LONDON.

19

	IT IS THIS DAY AGREED between	1
	of (hereinafter referred to as "Owners"), being owners of the	2
	good vessel called	3
	(hereinafter referred to as "the vessel") described as per Clause 1 hereof and	4
	of (hereinafter referred to as "Charterers"):	5
Description and Condition of Vessel	1. At the date of delivery of the vessel under this charter	6
	(a) she shall be classed:	7
	(b) she shall be in every way fit to carry crude petroleum and/or its products;	8
	(c) she shall be tight, staunch, strong, in good order and condition, and in every way fit for the service, with her machinery, boilers, hull and other equipment (including but not limited to hull stress calculator and radar) in a good and efficient state:	9 10 11
	(d) her tanks, valves and pipelines shall be oil-tight;	12
	(e) she shall be in every way fitted for burning	13
	at sea - fueloil with a maximum viscosity of Centistokes at 50 degrees Centigrade/any commercial grade of fueloil ("ACGFO") for main propulsion, marine diesel oil/ACGFO for auxiliaries	14 15 16
	in port - marine diesel oil/ACGFO for auxiliaries;	17
	(f) she shall comply with the regulations in force so as to enable her to pass through the Suez and Panama Canals by day and night without delay;	18 19
	(g) she shall have on board all certificates, documents and equipment required from time to time by any applicable law to enable her to perform the charter service without delay;	20 21
	(h) she shall comply with the description in Form B appended hereto, provided however that if there is any conflict between the provisions of Form B and any other provision, including this Clause 1, of this charter such other provision shall govern.	22 23 24
Shipboard Personnel and their Duties	2. (a) At the date of delivery of the vessel under this charter	25
	(i) she shall have a full and efficient complement of master, officers and crew for a vessel of her tonnage, who shall in any event be not less than the number required by the laws of the flag state and who shall be trained to operate the vessel and her equipment competently and safely;	26 27 28
	(ii) all shipboard personnel shall hold valid certificates of competence in accordance with the requirements of the law of the flag state;	29 30
	(iii) all shipboard personnel shall be trained in accordance with the relevant provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978;	31 32
	(iv) there shall be on board sufficient personnel with a good working knowledge of the English language to enable cargo operations at loading and discharging places to be carried out efficiently and safely and to enable communications between the vessel and those loading the vessel or accepting discharge therefrom to be carried out quickly and efficiently.	33 34 35 36
	(b) Owners guarantee that throughout the charter service the master shall with the vessel's officers and crew, unless otherwise ordered by Charterers,	37 38
	(i) prosecute all voyages with the utmost despatch;	39
	(ii) render all customary assistance; and	40
	(iii) load and discharge cargo as rapidly as possible when required by Charterers or their agents to do so, by night or by day, but always in accordance with the laws of the place of loading or discharging (as the case may be) and in each case in accordance with any applicable laws of the flag state.	41 42 43
Duty to Maintain	3. (i) Throughout the charter service Owners shall, whenever the passage of time, wear and tear or any event (whether or not coming within Clause 27 hereof) requires steps to be taken to maintain or restore the conditions stipulated in Clauses 1 and 2(a), exercise due diligence so to maintain or restore the vessel.	44 45 46
	(ii) If at any time whilst the vessel is on hire under this charter the vessel fails to comply with the requirements of Clauses 1.2(a) or 10 then hire shall be reduced to the extent necessary to indemnify Charterers for such failure. If and to the extent that such failure affects the time taken by the vessel to perform any services under this charter, hire shall be reduced by an amount equal to the value, calculated at the rate of hire, of the time so lost.	47 48 49 50 51
	Any reduction of hire under this sub-Clause (ii) shall be without prejudice to any other remedy available to Charterers, but where such reduction of hire is in respect of time lost, such time shall be excluded from any calculation under Clause 24.	52 53 54
	(iii) If Owners are in breach of their obligation under Clause 3(i) Charterers may so notify Owners in writing: and if, after the expiry of 30 days following the receipt by Owners of any such notice, Owners have failed	55 56



	to demonstrate to Charterers' reasonable satisfaction the exercise of due diligence as required in Clause 3(i), the vessel shall be off-hire, and no further hire payments shall be due, until Owners have so demonstrated that they are exercising such due diligence.	57 58 59
	Furthermore, at any time while the vessel is off-hire under this Clause 3 Charterers have the option to terminate this charter by giving notice in writing with effect from the date on which such notice of termination is received by Owners or from any later date stated in such notice. This sub-Clause (iii) is without prejudice to any rights of Charterers or obligations of Owners under this charter or otherwise (including without limitation Charterers rights under Clause 21 hereof).	60 61 62 63 64
Period Trading Limits	4. Owners agree to let and Charterers agree to hire the vessel for a period of commencing from the time and date of delivery of the vessel, for the purpose of carrying all lawful merchandise (subject always to Clause 28) including in particular	65 66 67
	in any part of the world, as Charterers shall direct, subject to the limits of the current British Institute Warranties and any subsequent amendments thereof. Notwithstanding the foregoing, but subject to Clause 35. Charterers may order the vessel to ice-bound waters or to any part of the world outside such limits provided that Owners consent thereto (such consent not to be unreasonably withheld) and that Charterers pay for any insurance premium required by the vessel's underwriters as a consequence of such order.	68 69 70 71 72
	Charterers shall use due diligence to ensure that the vessel is only employed between and at safe places (which expression when used in this charter shall include ports, berths, wharves, docks, anchorages, submarine lines, alongside vessels or lighters, and other locations including locations at sea) where she can safely lie always afloat. Notwithstanding anything contained in this or any other clause of this charter. Charterers do not warrant the safety of any place to which they order the vessel and shall be under no liability in respect thereof except for loss or damage caused by their failure to exercise due diligence as aforesaid. Subject as above, the vessel shall be loaded and discharged at any places as Charterers may direct, provided that Charterers shall exercise due diligence to ensure that any ship-to-ship transfer operations shall conform to standards not less than those set out in the latest published edition of the ICS/OCIMF Ship-to-Ship Transfer Guide.	73 74 75 76 77 78 79 80 81
	The vessel shall be delivered by Owners at a port in	82
	at Owners' option and redelivered to Owners at a port in	83
	at Charterers' option.	84
Laydays/ Cancelling	5. The vessel shall not be delivered to Charterers before and Charterers shall have the option of cancelling this charter if the vessel is not ready and at their disposal on or before	85 86
Owners to Provide	6. Owners undertake to provide and to pay for all provisions, wages, and shipping and discharging fees and all other expenses of the master, officers and crew; also, except as provided in Clauses 4 and 34 hereof, for all insurance on the vessel, for all deck, cabin and engine-room stores, and for water; for all drydocking, overhaul, maintenance and repairs to the vessel; and for all fumigation expenses and de-rat certificates. Owners' obligations under this Clause 6 extend to all liabilities for customs or import duties arising at any time during the performance of this charter in relation to the personal effects of the master, officers and crew, and in relation to the stores, provisions and other matters aforesaid which Owners are to provide and pay for and Owners shall refund to Charterers any sums Charterers or their agents may have paid or been compelled to pay in respect of any such liability. Any amounts allowable in general average for wages and provisions and stores shall be credited to Charterers insofar as such amounts are in respect of a period when the vessel is on-hire.	87 88 89 90 91 92 93 94 95 96
Charterers to Provide	7. Charterers shall provide and pay for all fuel (except fuel used for domestic services), towage and pilotage and shall pay agency fees, port charges, commissions, expenses of loading and unloading cargoes, canal dues and all charges other than those payable by Owners in accordance with Clause 6 hereof, provided that all charges for the said items shall be for Owners' account when such items are consumed, employed or incurred for Owners' purposes or while the vessel is off-hire (unless such items reasonably relate to any service given or distance made good and taken into account under Clause 21 or 22); and provided further that any fuel used in connection with a general average sacrifice or expenditure shall be paid for by Owners.	97 98 99 100 101 102 103
Rate of Hire	8. Subject as herein provided, Charterers shall pay for the use and hire of the vessel at the rate of per day, and pro rata for any part of a day, from the time and date of her delivery (local time) until the time and date of her redelivery (local time) to Owners.	104 105 106
Payment of Hire	9. Subject to Clause 3(iii), payment of hire shall be made in immediately available funds to:	107
	Account	108
	in per calendar month in advance, less:	109
	(i) any hire paid which Charterers reasonably estimate to relate to off-hire periods, and	110
	(ii) any amounts disbursed on Owners' behalf, any advances and commission thereon, and	111
	charges which are for Owners' account pursuant to any provision hereof, and	112
	(iii) any amounts due or reasonably estimated to become due to Charterers under Clause 3(ii) or 24 hereof,	113 114
	any such adjustments to be made at the due date for the next monthly payment after the facts have been ascertained. Charterers shall not be responsible for any delay or error by Owners' bank in crediting Owners' account provided that Charterers have made proper and timely payment.	115 116 117
	In default of such proper and timely payment,	118
	(a) Owners shall notify Charterers of such default and Charterers shall within seven days of receipt of such notice pay to Owners the amount due including interest, failing which Owners may withdraw the vessel from the service of Charterers without prejudice to any other rights Owners may have under this charter or otherwise;	119 120 121
	and	122
	(b) Interest on any amount due but not paid on the due date shall accrue from the day after that date up to and including the day when payment is made, at a rate per annum which shall be 1% above the U.S. Prime	123 124

	Interest Rate as published by the Chase Manhattan Bank in New York at 12.00 New York time on the due date.	125
	or, if no such interest rate is published on that day, the interest rate published on the next preceding day on which such a rate was so published, computed on the basis of a 360 day year of twelve 30-day months, compounded semi-annually.	126 127 128
Space Available to Charterers	10. The whole reach, burthen and decks of the vessel and any passenger accommodation (including Owners' suite) shall be at Charterers' disposal, reserving only proper and sufficient space for the vessel's master, officers, crew, tackle, apparel, furniture, provisions and stores, provided that the weight of stores on board shall not, unless specially agreed, exceed tonnes at any time during the charter period.	129 130 131 132
Overtime	11. Overtime pay of the master, officers and crew in accordance with ship's articles shall be for Charterers' account when incurred, as a result of complying with the request of Charterers or their agents, for loading, discharging, heating of cargo, bunkering or tank cleaning.	133 134 135
Instructions and Logs	12. Charterers shall from time to time give the master all requisite instructions and sailing directions, and he shall keep a full and correct log of the voyage or voyages, which Charterers or their agents may inspect as required. The master shall when required furnish Charterers or their agents with a true copy of such log and with properly completed loading and discharging port sheets and voyage reports for each voyage and other returns as Charterers may require. Charterers shall be entitled to take copies at Owners' expense of any such documents which are not provided by the master.	136 137 138 139 140 141
Bills of Lading	13. (a) The master (although appointed by Owners) shall be under the orders and direction of Charterers as regards employment of the vessel, agency and other arrangements, and shall sign bills of lading as Charterers or their agents may direct (subject always to Clauses 35(a) and 40) without prejudice to this charter. Charterers hereby indemnify Owners against all consequences or liabilities that may arise (i) from signing bills of lading in accordance with the directions of Charterers, or their agents, to the extent that the terms of such bills of lading fail to conform to the requirements of this charter, or (except as provided in Clause 13(b)) from the master otherwise complying with Charterers or their agents orders: (ii) from any irregularities in papers supplied by Charterers or their agents. (b) Notwithstanding the foregoing, Owners shall not be obliged to comply with any orders from Charterers to discharge all or part of the cargo (i) at any place other than that shown on the bill of lading and/or (ii) without presentation of an original bill of lading unless they have received from Charterers both written confirmation of such orders and an indemnity in a form acceptable to Owners.	142 143 144 145 146 147 148 149 150 151 152 153 154 155
Conduct of Vessel's Personnel	14. If Charterers complain of the conduct of the master or any of the officers or crew, Owners shall immediately investigate the complaint. If the complaint proves to be well founded, Owners shall, without delay, make a change in the appointments and Owners shall in any event communicate the result of their investigations to Charterers as soon as possible.	156 157 158 159
Bunkers at Delivery and Redelivery	15. Charterers shall accept and pay for all bunkers on board at the time of delivery, and Owners shall on redelivery (whether it occurs at the end of the charter period or on the earlier termination of this charter) accept and pay for all bunkers remaining on board, at the then-current market prices at the port of delivery or redelivery, as the case may be, or if such prices are not available payment shall be at the then-current market prices at the nearest port at which such prices are available; provided that if delivery or redelivery does not take place in a port payment shall be at the price paid at the vessel's last port of bunkering before delivery or redelivery, as the case may be. Owners shall give Charterers the use and benefit of any fuel contracts they may have in force from time to time, if so required by Charterers, provided suppliers agree.	160 161 162 163 164 165 166 167
Stevedores, Pilots, Tugs	16. Stevedores when required shall be employed and paid by Charterers, but this shall not relieve Owners from responsibility at all times for proper stowage, which must be controlled by the master who shall keep a strict account of all cargo loaded and discharged. Owners hereby indemnify Charterers, their servants and agents against all losses, claims, responsibilities and liabilities arising in any way whatsoever from the employment of pilots, tugboats or stevedores, who although employed by Charterers shall be deemed to be the servants of and in the service of Owners and under their instructions (even if such pilots, tugboat personnel or stevedores are in fact the servants of Charterers their agents or any affiliated company); provided, however, that (i) the foregoing indemnity shall not exceed the amount to which Owners would have been entitled to limit their liability if they had themselves employed such pilots, tugboats or stevedores, and (ii) Charterers shall be liable for any damage to the vessel caused by or arising out of the use of stevedores, fair wear and tear excepted, to the extent that Owners are unable by the exercise of due diligence to obtain redress therefor from stevedores.	168 169 170 171 172 173 174 175 176 177 178 179
Supernumeraries	17. Charterers may send representatives in the vessel's available accommodation upon any voyage made under this charter, Owners finding provisions and all requisites as supplied to officers, except liquors. Charterers paying at the rate of per day for each representative while on board the vessel.	180 181 182
Sub-letting	18. Charterers may sub-let the vessel, but shall always remain responsible to Owners for due fulfilment of this charter.	183 184
Final Voyage	19. If when a payment of hire is due hereunder Charterers reasonably expect to redeliver the vessel before the next payment of hire would fall due, the hire to be paid shall be assessed on Charterers' reasonable estimate of the time necessary to complete Charterers' programme up to redelivery, and from which estimate Charterers may deduct amounts due or reasonably expected to become due for (i) disbursements on Owners' behalf or charges for Owners' account pursuant to any provision hereof, and (ii) bunkers on board at redelivery pursuant to Clause 15. Promptly after redelivery any overpayment shall be refunded by Owners or any underpayment made good by Charterers. If at the time this charter would otherwise terminate in accordance with Clause 4 the vessel is on a ballast voyage to a port of redelivery or is upon a laden voyage, Charterers shall continue to have the use of the	185 186 187 188 189 190 191 192 193 194 195

vessel at the same rate and conditions as stand herein for as long as necessary to complete such ballast voyage, or to complete such laden voyage and return to a port of redelivery as provided by this charter, as the case may be. 196  
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Loss of Vessel 20. Should the vessel be lost, this charter shall terminate and hire shall cease at noon on the day of her loss; should the vessel be a constructive total loss, this charter shall terminate and hire shall cease at noon on the day on which the vessel's underwriters agree that the vessel is a constructive total loss; should the vessel be missing, this charter shall terminate and hire shall cease at noon on the day on which she was last heard of. Any hire paid in advance and not earned shall be returned to Charterers and Owners shall reimburse Charterers for the value of the estimated quantity of bunkers on board at the time of termination, at the price paid by Charterers at the last bunkering port. 198  
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Off-hire 21. (a) On each and every occasion that there is loss of time (whether by way of interruption in the vessel's service or, from reduction in the vessel's performance, or in any other manner) 205  
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(i) due to deficiency of personnel or stores; repairs; gas-freeing for repairs; time in and waiting to enter dry dock for repairs; breakdown (whether partial or total) of machinery, boilers or other parts of the vessel or her equipment (including without limitation tank coatings); overhaul, maintenance or survey; collision, stranding, accident or damage to the vessel; or any other similar cause preventing the efficient working of the vessel; and such loss continues for more than three consecutive hours (if resulting from interruption in the vessel's service) or cumulates to more than three hours (if resulting from partial loss of service); or 207  
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(ii) due to industrial action, refusal to sail, breach of orders or neglect of duty on the part of the master, officers or crew; or 213  
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(iii) for the purpose of obtaining medical advice or treatment for or landing any sick or injured person (other than a Charterers' representative carried under Clause 17 hereof) or for the purpose of landing the body of any person (other than a Charterers' representative), and such loss continues for more than three consecutive hours; or 215  
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(iv) due to any delay in quarantine arising from the master, officers or crew having had communication with the shore at any infected area without the written consent or instructions of Charterers or their agents, or to any detention by customs or other authorities caused by smuggling or other infraction of local law on the part of the master, officers, or crew; or 219  
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(v) due to detention of the vessel by authorities at home or abroad attributable to legal action against or breach of regulations by the vessel, the vessel's owners, or Owners (unless brought about by the act or neglect of Charterers); then 223  
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without prejudice to Charterers' rights under Clause 3 or to any other rights of Charterers hereunder or otherwise the vessel shall be off-hire from the commencement of such loss of time until she is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which such loss of time commenced; provided, however, that any service given or distance made good by the vessel whilst off-hire shall be taken into account in assessing the amount to be deducted from hire. 226  
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(b) If the vessel fails to proceed at any guaranteed speed pursuant to Clause 24, and such failure arises wholly or partly from any of the causes set out in Clause 21(a) above, then the period for which the vessel shall be off-hire under this Clause 21 shall be the difference between 231  
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(i) the time the vessel would have required to perform the relevant service at such guaranteed speed, and 234  
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(ii) the time actually taken to perform such service (including any loss of time arising from interruption in the performance of such service). 236  
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For the avoidance of doubt, all time included under (ii) above shall be excluded from any computation under Clause 24. 238  
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(c) Further and without prejudice to the foregoing, in the event of the vessel deviating (which expression includes without limitation putting back, or putting into any port other than that to which she is bound under the instructions of Charterers) for any cause or purpose mentioned in Clause 21(a), the vessel shall be off-hire from the commencement of such deviation until the time when she is again ready and in an efficient state to resume her service from a position not less favourable to Charterers than that at which the deviation commenced, provided, however, that any service given or distance made good by the vessel whilst so off-hire shall be taken into account in assessing the amount to be deducted from hire. If the vessel, for any cause or purpose mentioned in Clause 21 (a), puts into any port other than the port to which she is bound on the instructions of Charterers, the port charges, pilotage and other expenses at such port shall be borne by Owners. Should the vessel be driven into any port or anchorage by stress of weather hire shall continue to be due and payable during any time lost thereby. 240  
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(d) If the vessel's flag state becomes engaged in hostilities, and Charterers in consequence of such hostilities find it commercially impracticable to employ the vessel and have given Owners written notice thereof then from the date of receipt by Owners of such notice until the termination of such commercial impracticability the vessel shall be off-hire and Owners shall have the right to employ the vessel on their own account. 251  
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(e) Time during which the vessel is off-hire under this charter shall count as part of the charter period. 255  
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Periodical Drydocking 22. (a) Owners have the right and obligation to drydock the vessel at regular intervals of 257  
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On each occasion Owners shall propose to Charterers a date on which they wish to drydock the vessel, not less than before such date, and Charterers shall offer a port for such periodical drydocking and shall take all reasonable steps to make the vessel available as near to such date as practicable. 259  
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Owners shall put the vessel in drydock at their expense as soon as practicable after Charterers place the vessel at Owners' disposal clear of cargo other than tank washings and residues. Owners shall be responsible for and pay for the disposal into reception facilities of such tank washings and residues and shall have the right to retain any monies received therefor, without prejudice to any claim for loss of cargo under any bill of lading or this charter. 263  
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(b) If a periodical drydocking is carried out in the port offered by Charterers (which must have suitable accommodation for the purpose and reception facilities for tank washings and residues), the vessel shall be off-hire from the time she arrives at such port until drydocking is completed and she is in every way ready to resume Charterers' service and is at the position at which she went off-hire or a position no less favourable to Charterers, whichever she first attains. However, 267  
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(i) provided that Owners exercise due diligence in gas-freeing, any time lost in gas-freeing to the standard required for entry into drydock for cleaning and painting the hull shall not count as off-hire, whether 272  
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lost on passage to the drydocking port or after arrival there (notwithstanding Clause 21), and 274  
(ii) any additional time lost in further gas-freeing to meet the standard required for hot work or 275  
entry to cargo tanks shall count as off-hire, whether lost on passage to the drydocking port or after arrival there. 276  
Any time which, but for sub-Clause (i) above, would be off-hire, shall not be included in any 277  
calculation under Clause 24. 278  
The expenses of gas-freeing, including without limitation the cost of bunkers, shall be for 279  
Owners account. 280  
(c) If Owners require the vessel, instead of proceeding to the offered port, to carry out periodical 281  
drydocking at a special port selected by them, the vessel shall be off-hire from the time when she is released to 282  
proceed to the special port until she next presents for loading in accordance with Charterers' instructions, 283  
provided, however, that Charterers shall credit Owners with the time which would have been taken on passage at 284  
the service speed had the vessel not proceeded to drydock. All fuel consumed shall be paid for by Owners but 285  
Charterers shall credit Owners with the value of the fuel which would have been used on such notional passage 286  
calculated at the guaranteed daily consumption for the service speed, and shall further credit Owners with any 287  
benefit they may gain in purchasing bunkers at the special port. 288  
(d) Charterers shall, insofar as cleaning for periodical drydocking may have reduced the amount of 289  
tank-cleaning necessary to meet Charterers' requirements, credit Owners with the value of any bunkers which 290  
Charterers calculate to have been saved thereby, whether the vessel drydocks at an offered or a special port. 291

Ship Inspection

23. Charterers shall have the right at any time during the charter period to make such inspection of the 292  
vessel as they may consider necessary. This right may be exercised as often and at such intervals as Charterers in 293  
their absolute discretion may determine and whether the vessel is in port or on passage. Owners affording all 294  
necessary co-operation and accommodation on board provided, however, 295  
(i) that neither the exercise nor the non-exercise, nor anything done or not done in the exercise 296  
or non-exercise, by Charterers of such right shall in any way reduce the master's or Owners' authority over, or 297  
responsibility to Charterers or third parties for, the vessel and every aspect of her operation, nor increase 298  
Charterers' responsibilities to Owners or third parties for the same; and 299  
(ii) that Charterers shall not be liable for any act, neglect or default by themselves, their 300  
servants or agents in the exercise or non-exercise of the aforesaid right. 301

Detailed Description and Performance

24. (a) Owners guarantee that the speed and consumption of the vessel shall be as follows:- 302  
Average speed Maximum average bunker consumption 303  
in knots main propulsion - auxiliaries 304  
fuel oil/diesel oil fuel oil/diesel oil 305  
Laden tonnes tonnes 306

Ballast 307

The foregoing bunker consumptions are for all purposes except cargo heating and tank cleaning 308  
and shall be pro-rated between the speeds shown. 309

The service speed of the vessel is knots laden and knots in ballast and in the absence 310  
of Charterers' orders to the contrary the vessel shall proceed at the service speed. However if more than one 311  
laden and one ballast speed are shown in the table above Charterers shall have the right to order the vessel to 312  
steam at any speed within the range set out in the table (the "ordered speed"). 313

If the vessel is ordered to proceed at any speed other than the highest speed shown in the table, 314  
and the average speed actually attained by the vessel during the currency of such order exceeds such ordered 315  
speed plus 0.5 knots (the "maximum recognised speed"), then for the purpose of calculating any increase or 316  
decrease of hire under this Clause 24 the maximum recognised speed shall be used in place of the average speed 317  
actually attained. 318

For the purposes of this charter the "guaranteed speed" at any time shall be the then-current 319  
ordered speed or the service speed, as the case may be 320

The average speeds and bunker consumptions shall for the purposes of this Clause 24 be 321  
calculated by reference to the observed distance from pilot station to pilot station on all sea passages during each 322  
period stipulated in Clause 24 (c), but excluding any time during which the vessel is (or but for Clause 22(b) (i) 323  
would be) off-hire and also excluding "Adverse Weather Periods", being (i) any periods during which reduction 324  
of speed is necessary for safety in congested waters or in poor visibility (ii) any days, noon to noon, when winds 325  
exceed force 8 on the Beaufort Scale for more than 12 hours. 326

(b) If during any year from the date on which the vessel enters service (anniversary to anniversary) 327  
the vessel falls below or exceeds the performance guaranteed in Clause 24(a) then if such shortfall or excess 328  
results 329

(i) from a reduction or an increase in the average speed of the vessel, compared to the speed 330  
guaranteed in Clause 24(a), then an amount equal to the value at the hire rate of the time so lost or gained, as the 331  
case may be, shall be deducted from or added to the hire paid: 332

(ii) from an increase or a decrease in the total bunkers consumed, compared to the total bunkers 333  
which would have been consumed had the vessel performed as guaranteed in Clause 24(a), an amount equivalent 334  
to the value of the additional bunkers consumed or the bunkers saved, as the case may be, based on the average 335  
price paid by Charterers for the vessel's bunkers in such period, shall be deducted from or added to the hire paid. 336

The addition to or deduction from hire so calculated for laden and ballast mileage respectively 337  
shall be adjusted to take into account the mileage steamed in each such condition during Adverse Weather 338  
Periods, by dividing such addition or deduction by the number of miles over which the performance has been 339  
calculated and multiplying by the same number of miles plus the miles steamed during the Adverse Weather 340  
Periods, in order to establish the total addition to or deduction from hire to be made for such period. 341

Reduction of hire under the foregoing sub-Clause (b) shall be without prejudice to any other 342  
remedy available to Charterers. 343

(c) Calculations under this Clause 24 shall be made for the yearly periods terminating on each 344  
successive anniversary of the date on which the vessel enters service, and for the period between the last such 345

	anniversary and the date of termination of this charter if less than a year. Claims in respect of reduction of hire arising under this Clause during the final year or part year of the charter period shall in the first instance be settled in accordance with Charterers' estimate made two months before the end of the charter period. Any necessary adjustment after this charter terminates shall be made by payment by Owners to Charterers or by Charterers to Owners as the case may require.	346 347 348 349 350
	Payments in respect of increase of hire arising under this Clause shall be made promptly after receipt by Charterers of all the information necessary to calculate such increase.	351 352
Salvage	25. Subject to the provisions of Clause 21 hereof, all loss of time and all expenses (excluding any damage to or loss of the vessel or tortious liabilities to third parties) incurred in saving or attempting to save life or in successful or unsuccessful attempts at salvage shall be borne equally by Owners and Charterers provided that Charterers shall not be liable to contribute towards any salvage payable by Owners arising in any way out of services rendered under this Clause 25. All salvage and all proceeds from derelicts shall be divided equally between Owners and Charterers after deducting the master's, officers' and crew's share.	353 354 355 356 357 358 359
Lien	26. Owners shall have a lien upon all cargoes and all freights, sub-freights and demurrage for any amounts due under this charter: and Charterers shall have a lien on the vessel for all monies paid in advance and not earned, and for all claims for damages arising from any breach by Owners of this charter.	360 361 362
Exceptions	27. (a) The vessel, her master and Owners shall not, unless otherwise in this charter expressly provided, be liable for any loss or damage or delay or failure arising or resulting from any act, neglect or default of the master, pilots, mariners or other servants of Owners in the navigation or management of the vessel: fire, unless caused by the actual fault or privity of Owners; collision or stranding; dangers and accidents of the sea; explosion, bursting of boilers, breakage of shafts or any latent defect in hull, equipment or machinery: provided, however, that Clauses 1, 2, 3 and 24 hereof shall be unaffected by the foregoing. Further, neither the vessel, her master or Owners, nor Charterers shall, unless otherwise in this charter expressly provided, be liable for any loss or damage or delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure under legal process, quarantine restrictions, strikes, lock-outs, riots, restraints of labour, civil commotions or arrest or restraint of princes, rulers or people. (b) The vessel shall have liberty to sail with or without pilots, to tow or go to the assistance of vessels in distress and to deviate for the purpose of saving life or property. (c) Clause 27(a) shall not apply to or affect any liability of Owners or the vessel or any other relevant person in respect of (i) loss or damage caused to any berth, jetty, dock, dolphin, buoy, mooring line, pipe or crane or other works or equipment whatsoever at or near any place to which the vessel may proceed under this charter, whether or not such works or equipment belong to Charterers, or (ii) any claim (whether brought by Charterers or any other person) arising out of any loss of or damage to or in connection with cargo. All such claims shall be subject to the Hague-Visby Rules or the Hague Rules, as the case may be, which ought pursuant to Clause 38 hereof to have been incorporated in the relevant bill of lading (whether or not such Rules were so incorporated) or, if no such bill of lading is issued, to the Hague-Visby Rules. (d) In particular and without limitation, the foregoing subsections (a) and (b) of this Clause shall not apply to or in any way affect any provision in this charter relating to off-hire or to reduction of hire.	363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386
Injurious Cargoes	28. No acids, explosives or cargoes injurious to the vessel shall be shipped and without prejudice to the foregoing any damage to the vessel caused by the shipment of any such cargo, and the time taken to repair such damage, shall be for Charterers' account. No voyage shall be undertaken, nor any goods or cargoes loaded, that would expose the vessel to capture or seizure by rulers or governments.	387 388 389 390
Grade of Bunkers	29. Charterers shall supply marine diesel oil/fuel oil with a maximum viscosity of Centistokes at 50 degrees Centigrade/ACGFO for main propulsion and diesel oil/ACGFO for the auxiliaries. If Owners require the vessel to be supplied with more expensive bunkers they shall be liable for the extra cost thereof. Charterers warrant that all bunkers provided by them in accordance herewith shall be of a quality complying with the International Marine Bunker Supply Terms and Conditions of Shell International Trading Company and with its specification for marine fuels as amended from time to time.	391 392 393 394 395 396
Disbursements	30. Should the master require advances for ordinary disbursements at any port, Charterers or their agents shall make such advances to him, in consideration of which Owners shall pay a commission of two and a half per cent, and all such advances and commission shall be deducted from hire.	397 398 399
Laying-up	31. Charterers shall have the option, after consultation with Owners, of requiring Owners to lay up the vessel at a safe place nominated by Charterers, in which case the hire provided for under this charter shall be adjusted to reflect any net increases in expenditure reasonably incurred or any net saving which should reasonably be made by Owners as a result of such lay-up, Charterers may exercise the said option any number of times during the charter period.	400 401 402 403 404
Requisition	32. Should the vessel be requisitioned by any government, de facto or de jure, during the period of this charter, the vessel shall be off-hire during the period of such requisition. and any hire paid by such government in respect of such requisition period shall be for Owners' account. Any such requisition period shall count as part of the charter period.	405 406 407 408
Outbreak of War	33. If war or hostilities break out between any two or more of the following countries: U.S.A., U.S.S.R., P.R.C., U.K., Netherlands-both Owners and Charterers shall have the right to cancel this charter.	409 410
Additional War Expenses	34. If the vessel is ordered to trade in areas where there is war (de facto or de jure) or threat of war, Charterers shall reimburse Owners for any additional insurance premia, crew bonuses and other expenses which are reasonably incurred by Owners as a consequence of such orders, provided that Charterers are given notice of such expenses as soon as practicable and in any event before such expenses are incurred, and provided further that Owners obtain from their insurers a waiver of any subrogated rights against Charterers in respect of any claims by Owners under their war risk insurance arising out of compliance with such orders.	411 412 413 414 415 416

War Risks

35. (a) The master shall not be required or bound to sign bills of lading for any place which in his or Owners' reasonable opinion is dangerous or impossible for the vessel to enter or reach owing to any blockade, war, hostilities, warlike operations, civil war, civil commotions or revolutions.

(b) If in the reasonable opinion of the master or Owners it becomes, for any of the reasons set out in Clause 35(a) or by the operation of international law, dangerous, impossible or prohibited for the vessel to reach or enter, or to load or discharge cargo at, any place to which the vessel has been ordered pursuant to this charter (a "place of peril"), then Charterers or their agents shall be immediately notified by telex or radio messages, and Charterers shall thereupon have the right to order the cargo, or such part of it as may be affected, to be loaded or discharged, as the case may be, at any other place within the trading limits of this charter (provided such other place is not itself a place of peril). If any place of discharge is or becomes a place of peril, and no orders have been received from Charterers or their agents within 48 hours after dispatch of such messages, then Owners shall be at liberty to discharge the cargo or such part of it as may be affected at any place which they or the master may in their or his discretion select within the trading limits of this charter and such discharge shall be deemed to be due fulfilment of Owners' obligations under this charter so far as cargo so discharged is concerned.

(c) The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any other wise whatsoever given by the government of the state under whose flag the vessel sails or any other government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or local authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations anything is done or is not done, such shall not be deemed a deviation.

If by reason of or in compliance with any such direction or recommendation the vessel does not proceed to any place of discharge to which she has been ordered pursuant to this charter, the vessel may proceed to any place which the master or Owners in his or their discretion select and there discharge the cargo or such part of it as may be affected. Such discharge shall be deemed to be due fulfilment of Owners obligations under this charter so far as cargo so discharged is concerned.

Charterers shall procure that all bills of lading issued under this charter shall contain the Chamber of Shipping War Risks Clause 1952.

Both to Blame Collision Clause

36. If the liability for any collision in which the vessel is involved while performing this charter falls to be determined in accordance with the laws of the United States of America, the following provision shall apply:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the cargo carried hereunder will indemnify the carrier against all loss, or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said cargo, paid or payable by the other or non-carrying ship or her owners to the owners of the said cargo and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier."

"The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact."

Charterers shall procure that all bills of lading issued under this charter shall contain a provision in the foregoing terms to be applicable where the liability for any collision in which the vessel is involved falls to be determined in accordance with the laws of the United States of America.

New Jason Clause

37. General average contributions shall be payable according to the York/Antwerp Rules, 1974, and shall be adjusted in London in accordance with English law and practice but should adjustment be made in accordance with the law and practice of the United States of America, the following provision shall apply:

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible by statute, contract or otherwise, the cargo, shippers, consignees or owners of the cargo shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo."

"If a salvaging ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salvaging ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery."

Charterers shall procure that all bills of lading issued under this charter shall contain a provision in the foregoing terms, to be applicable where adjustment of general average is made in accordance with the laws and practice of the United States of America.

Clause Paramount

38. Charterers shall procure that all bills of lading issued pursuant to this charter shall contain the following clause:

"(1) Subject to sub-clause (2) hereof, this bill of lading shall be governed by, and have effect subject to, the rules contained in the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25th August 1924 (hereafter the "Hague Rules") as amended by the Protocol signed at Brussels on 23rd February 1968 (hereafter the "Hague-Visby Rules"). Nothing contained herein shall be deemed to be either a surrender by the carrier of any of his rights or immunities or any increase of any of his responsibilities or liabilities under the "Hague-Visby Rules."

"(2) If there is governing legislation which applies the Hague Rules compulsorily to this bill of lading, to the exclusion of the Hague-Visby Rules, then this bill of lading shall have effect subject to the Hague Rules. Nothing herein contained shall be deemed to be either a surrender by the carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the Hague Rules."

"(3) If any term of this bill of lading is repugnant to the Hague-Visby Rules, or Hague Rules if applicable, such term shall be void to that extent but no further."

"(4) Nothing in this bill of lading shall be construed as in any way restricting, excluding or waiving the right of any relevant party or person to limit his liability under any available legislation and/or law."

39. Owners warrant that the vessel is:	494
(i) a tanker in TOVALOP and	495
(ii) properly entered in	P & I Club 496

and will so remain during the currency of this charter. 497

When an escape or discharge of Oil occurs from the vessel and causes or threatens to cause Pollution Damage, or when there is the threat of an escape or discharge of Oil (i.e. a grave and imminent danger of the escape or discharge of Oil which, if it occurred, would create a serious danger of Pollution Damage, whether or not an escape or discharge in fact subsequently occurs), then Charterers may, at their option, upon notice to Owners or master, undertake such measures as are reasonably necessary to prevent or minimise such Pollution Damage or to remove the Threat, unless Owners promptly undertake the same. Charterers shall keep Owners advised of the nature and result of any such measures taken by them and, if time permits, the nature of the measures intended to be taken by them. Any of the aforementioned measures taken by Charterers shall be deemed taken on Owners' authority as Owners' agent, and shall be at Owners' expense except to the extent that:

- (1) any such escape or discharge or Threat was caused or contributed to by Charterers, or
- (2) by reason of the exceptions set out in Article III, paragraph 2, of the 1969 International Convention on Civil Liability for Oil Pollution Damage, Owners are or, had the said Convention applied to such escape or discharge or to the Threat, would have been exempt from liability for the same, or
- (3) the cost of such measures together with all other liabilities, costs and expenses of Owners arising out of or in connection with such escape or discharge or Threat exceeds one hundred and sixty United States Dollars (US \$160) per ton of the vessel's Tonnage or sixteen million eight hundred thousand United States Dollars (US \$16,800,000), whichever is the lesser, save and insofar as Owners shall be entitled to recover such excess under either the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage or under CRISTAL;

PROVIDED ALWAYS that if Owners in their absolute discretion consider said measures should be discontinued. Owners shall so notify Charterers and thereafter Charterers shall have no right to continue said measures under the provisions of this Clause 39 and all further liability to Charterers under this Clause 39 shall thereupon cease.

The above provisions are not in derogation of such other rights as Charterers or Owners may have under this charter or otherwise have or acquire by law or any International Convention or TOVALOP.

The term "TOVALOP" means the Tanker Owners' Voluntary Agreement Concerning Liability for Oil Pollution dated 7th January 1969, as amended from time to time, and the term "CRISTAL" means the Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution dated 14th January 1971, as amended from time to time. The terms "Oil", "Pollution Damage", and "Tonnage" shall for the purposes of this Clause 39 have the meanings ascribed to them in TOVALOP.

Export  
Restrictions

40. The master shall not be required or bound to sign bills of lading for the carriage of cargo to any place to which export of such cargo is prohibited under the laws, rules or regulations of the country in which the cargo was produced and/or shipped.

Charterers shall procure that all bills of lading issued under this charter shall contain the following clause:

"If any laws rules or regulations applied by the government of the country in which the cargo was produced and/or shipped, or any relevant agency thereof, impose a prohibition on export of the cargo to the place of discharge designated in or ordered under this bill of lading, carriers shall be entitled to require cargo owners forthwith to nominate an alternative discharge place for the discharge of the cargo, or such part of it as may be affected, which alternative place shall not be subject to the prohibition, and carriers shall be entitled to accept orders from cargo owners to proceed to and discharge at such alternative place. If cargo owners fail to nominate an alternative place within 72 hours after they or their agents have received from carriers notice of such prohibition, carriers shall be at liberty to discharge the cargo or such part of it as may be affected by the prohibition at any safe place on which they or the master may in their or his absolute discretion decide and which is not subject to the prohibition, and such discharge shall constitute due performance of the contract contained in this bill of lading so far as the cargo so discharged is concerned".

The foregoing provision shall apply mutatis mutandis to this charter, the references to a bill of lading being deemed to be references to this charter.

Law and  
Litigation

41. (a) This charter shall be construed and the relations between the parties determined in accordance with the laws of England.

(b) Any dispute arising under this charter shall be decided by the English Courts to whose jurisdiction the parties hereby agree.

(c) Notwithstanding the foregoing, but without prejudice to any party's right to arrest or maintain the arrest of any maritime property, either party may, by giving written notice of election to the other party, elect to have any such dispute referred to the arbitration of a single arbitrator in London in accordance with the provisions of the Arbitration Act 1950, or any statutory modification or re-enactment thereof for the time being in force.

(i) A party shall lose its right to make such an election only if:

- (a) it receives from the other party a written notice of dispute which -
  - (1) states expressly that a dispute has arisen out of this charter:
  - (2) specifies the nature of the dispute: and
  - (3) refers expressly to this clause 41(c)

and

(b) it fails to give notice of election to have the dispute referred to arbitration not later than 30 days from the date of receipt of such notice of dispute.

(ii) The parties hereby agree that either party may -

- (a) appeal to the High Court on any question of law arising out of an award:
- (b) apply to the High Court for an order that the arbitrator state the reasons for his award:
- (c) give notice to the arbitrator that a reasoned award is required: and
- (d) apply to the High Court to determine any question of law arising in the course of the reference.

(d) It shall be a condition precedent to the right of any party to a stay of any legal proceedings in which maritime property has been, or may be, arrested in connection with a dispute under this charter, that that

party furnishes to the other party security to which that other party would have been entitled in such legal proceedings in the absence of a stay. 572  
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Construction

42. The side headings have been included in this charter for convenience of reference and shall in no way affect the construction hereof. 574  
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